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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~317~~ 118

JOSEPH H. BRADLEY, PLAINTIFF IN ERROR,

vs.

GEORGE P. FISHER.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 29, 1870.

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1 "B."

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Joseph H. Bradley, plaintiff, and George P. Fisher, defendant, No. 4961, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said supreme court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable S. P. Chase, Chief Justice of the United States, this 6th day of December, in the year of our Lord 1869, and of the independence of the United States the ninety-fourth.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

TO GEORGE P. FISHER:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Joseph H. Bradley is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness, D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Ch'f Justice.*

Service acknowledged Dec. 6, 1869.

WILLIAM A. COOK,
Att'y for Def't.

2 "B B."

In the supreme court of the district of Columbia, the day of , 18 .

JOSEPH H. BRADLEY
vs.
GEORGE P. FISHER. } At Law. No. 4961. In error.

Know all men by these presents that we, Joseph H. Bradley and A. Tho's Bradley, both of the city of Washington, are bound unto the

above-named George P. Fisher, in the sum of two hundred dollars, to be paid to the said George P. Fisher, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this seventh day of December, 1869.

Whereas the above-named Joseph H. Bradley hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the district of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Joseph H. Bradley shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOS. H. BRADLEY. [SEAL.]
A. THO'S BRADLEY. [SEAL.]

Sealed and delivered in presence of—
A. BROWNING.
L. BROWNING.

The foregoing bond is hereby approved. Dec. 7, 1869.
D. K. CARTTER,
Ch'f Justice.

3 In the supreme court of the District of Columbia.

[Filed August 6, 1868.]

JOSEPH H. BRADLEY
vs.
GEORGE P. FISHER. } No. 4961. At law.

Joseph H. Bradley, the plaintiff in the above entitled cause, sues the said George P. Fisher, the defendant therein, to recover damages sustained by him, the said plaintiff, by reason of the wilful, malicious, oppressive, and tyrannical acts and conduct of the said defendant to and toward the said plaintiff, on the tenth day of August, eighteen hundred and sixty-seven, whereby he, the said plaintiff, was deprived of his rights to practice in this court as an attorney of this court, to which said office of attorney, he, the said plaintiff, had been there'fore duly and lawfully admitted; and says that, on the said tenth day of August, eighteen hundred and sixty-seven, the said George P. Fisher, then being one of the justices of the said supreme court, read in the open court-room, and without any reasonable or probable cause therefor, and caused to be recorded, and the same was recorded, on the minutes of the criminal court, being one of the branches of the said supreme court, a certain order in the words and figures following, that is to say:

"The court orders the following to be entered of record, to wit:

"On the second day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immedi-
4 ately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esq., accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of

insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, threatened the judge with personal chastisement.

"No court can administer justice or live, if its judges are to be threatened with personal chastisement on all occasions whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished.

"It is, therefore, ordered that his name be stricken from the roll of attorneys practicing in this court.

"GEO. P. FISHER,
"*Justice of the Supreme Court D. C.*"

He, the said George P. Fisher, then and there well knowing in point of fact that the said statement of fact in said paper-writing set out and contained was wholly untrue; and that immediately after the court had taken a recess until the following morning, as the presiding judge was descending from the bench, the said Joseph H. Bradley did not accost him in a rude and insulting manner; and that the said Joseph H. Bradley did not charge the said George P. Fisher then and there, to wit, the second day of July, 1867, the presiding judge in said court, with having offered him, the said Bradley, a series of insults from the bench from the commencement of the trial of the said John H. Surratt; and also, well knowing that he, the said George P. Fisher, presiding judge
5 as aforesaid, did not disclaim any intention of passing any insult whatever; and did not assure the said Bradley that he entertained for him no other feelings but those of respect; and also well knowing that the said Joseph H. Bradley did not threaten him, the said George P. Fisher, judge as aforesaid, with personal chastisement; and that by the said false statement of facts, and by making the same a record of the said court, the said George P. Fisher falsely, fraudulently, corruptly, and maliciously intended thereby to give a color of jurisdiction for his making the said order, to wit, the order that his name (to wit, the name of the said Joseph H. Bradley,) be stricken from the roll of attorneys practicing in this court, whereby the said Joseph H. Bradley says he has been injured, and he claims damages in the sum of twenty thousand dollars.

Second count, and—

For that whereas the said plaintiff, at the city of Washington, and District of Columbia, before and at the time of the committing of the grievances hereinafter complained of, was in the lawful possession of the office of attorney at law, with the right and privilege at all times freely to enjoy said office by practicing as an attorney at law in any of the courts of the said District, by means whereof the plaintiff was enabled to earn, and did earn, divers profits and emoluments; yet the said defendant, being one of the justices of the supreme court of the District of Columbia, well knowing the premises, but contriving and wrongfully, corruptly, maliciously, and unjustly intending to injure and disturb the said plaintiff, and to deprive him of the right and privilege, use, benefit, and profit of his said office, whilst the plaintiff was so possessed, and so in the enjoyment of the same, to wit, on the 10th day of August, 1867, at the county and District aforesaid, unlawfully and without the leave or license, and against the will and objection of the plaintiff, and
6 without any lawful authority or jurisdiction of the said George P.

Fisher, justice as aforesaid, so to do, and without any reasonable or probable cause therefor; and in violation of said defendant's duty, and of the legal rights of the plaintiff under and by color of said office, wantonly, corruptly, arbitrarily, and oppressively, intending to remove the plaintiff from his said office as attorney at law, entered, and caused to be entered, on the records of the supreme court of the District of Columbia, criminal court, March term, 1867, an order as follows:

"The court orders the following to be entered of record, to wit:

"On the second day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esq. accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, aad assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, threatened the judge with personal chastisement.

"No court can administer justice or live, if its judges are to be threatened with personal chastisement on all occasions whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished.

"It is, therefore, ordered that his name be stricken from the roll of attorneys practicing in this court.

"GEO. P. FISHER,
"*Justice of the Supreme Court, D. C.*"

7 The same being an order removing the plaintiff from the office of an attorney at law in the said supreme court of the District of Columbia, and thereby the plaintiff was greatly disturbed in the enjoyment of his said office, and prevented from having the use and benefit thereof in so full and ample a manner as he otherwise might, and could, and would have done, and was lawfully entitled to do, and thereby during all the time, from the said tenth day of August, 1867, to this day hindered and prevented the plaintiff from enjoying and practicing his said office and exercising his rights as an attorney at law in the said court; and whereby the plaintiff could not, during the time aforesaid, have or enjoy the use of said office in as ample and beneficial a manner as he otherwise might and ought to do, and would have done, and hath been greatly disturbed and molested in the use and enjoyment thereof as aforesaid.

And the plaintiff further, in fact, saith that the said George P. Fisher was, by the statutes in such case made and provided, expressly and in terms prohibited from proceeding summarily to punish the plaintiff for an alleged contempt unless the act complained of was committed in the presence of the court, or so near thereto as to disturb the administration of justice; and, in point of fact, he says the said proceeding and order was wholly without notice of any kind to him, and was summary; and he avers that there was no complaint made by him to the said justice, and he did not accost him, on the day and year aforesaid, while the court was in session, nor immediately on the court's taking a recess and as the presiding judge was descending from the bench, as is falsely stated in the said order; nor did he, the plaintiff, at the time and place aforesaid, (being the

same time and and place mentioned in said order,) address the said justice at all after the said court had taken the said recess, until the said judge had passed some time in a private room, and had left the
8 same and gone out of the court-house; and the great body of auditors, jurors, witnesses, clerks, and officers of the court, and the jury impannelled, and the prisoner on trial had left the court-house; and so he says the said judge wilfully, maliciously, corruptly, and unlawfully fabricated the said order to give color and pretence to his jurisdiction in the premises.

Wherefore the plaintiff says that by reason of the unlawful, wrongful, unjust, and oppressive acts of said defendant, the plaintiff has been deprived of divers profits and emoluments, and hath lost divers sums of money which would otherwise have arisen and accrued to him from the peaceful enjoyment of his said office and from the management, conduct, and practice as an attorney at law in causes and legal proceedings in the courts of said county and district; and also his right and title to his said office was imperilled and denied, to his great loss and damage; and he hath also been put to great expense and incurred liabilities in the employment of counsel to conduct and manage causes, suits, and actions in the courts of the said district, of which plaintiff had charge as attorney at law, and where'n he could have saved to himself the amounts so paid, and which liabilities incurred could have been avoided by the plaintiff had he been suffered, without the interruption aforesaid, to enjoy and exercise his said office and his rights as an attorney at law.

And hath also in divers other ways sustained expense and serious loss and damage by reason of the defendant's unlawful acts as aforesaid. Wherefore he claims to recover twenty thousand dollars damages from the defendant.

JOS. H. BRADLEY.

MR. MEIGS: Please to issue in this case, and oblige.

JOS. H. BRADLEY.

AUGUST 6, 1868.

9 *Summons.*

In the supreme court of the District of Columbia, the 6th day of August 1868.

JOS. H. BRADLEY, PL'FF, *vs.* GEORGE P. FISHER, DEF'T. } No. 4961. At law.

The President of the United States to the marshal for said District, greeting:

Summon the defendant in the above-entitled case to appear in said court on or before the first special term thereof, occurring twenty days after service of this writ, and answer the declaration herewith served; and warn him that, on default of so doing, the plaintiff may proceed to judgment and execution at the trial term of said court next after said service. And do you return this writ into the clerk's office, immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness D. K. Cartter, chief justice of said court.

R. J. MEIGS, *Clerk.*

NOTE.—That the special terms of the court commence on the first Tuesday of every month except May, in which month they commence on the third Monday, and August, in which month there is no term of the court; and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

Marshal's return.

Served copy summon' and declaration on defendant, August 12, 1868.
D. S. GOODING, *Marshal.*

10 *Plea.—Filed Aug.* 29, 1868.

In the supreme court of the District of Columbia.

JOSEPH H. BRADLEY, SR., *vs.* GEORGE P. FISHER. } No. 4961. Law.

And now, to wit, August 29, 1868, the defendant, by William A. Cook, his attorney, comes and defends the wrong and injury, when, &c., and says he is not guilty of the supposed grievance laid to his charge, or either, or any, or any part thereof, in manner and form as said plaintiff has complained against him. And of this the said defendant puts himself on the country, &c.

WILLIAM A. COOK,
Attorney for Defendant.

Joinder.—Filed Oct. 23, 1868.

In the supreme court of the District of Columbia.

JOSEPH H. BRADLEY *vs.* GEORGE P. FISHER. } No. 4961. At law.

The plaintiff takes issue upon the defendant's plea.
JOS. H. BRADLEY, *Pl'ff.*

Special plea.—Filed on leave, June 19, 1869.

In the supreme court of the District of Columbia.

GEORGE P. FISHER *ats.* JOSEPH H. BRADLEY. }

And the said George P. Fisher, by William A. Cook, his attorney, comes and defends the wrong and injury, then, &c., and says that the said Joseph H. Bradley, the plaintiff, ought not to have and maintain his action aforesaid against him, the said defendant, because he
11 says that, before and at the time of the alleged commission of the said supposed trespass in the plaintiff's declaration mentioned, the defendant was one of the justices of the supreme court of the District of Columbia, and, as such justice, was regularly and lawfully hold-

ing, by appointment of said supreme court of the District of Columbia, in general term, at the city of Washington, in Washington County, in said district, a court of record, to wit, the criminal court of said district, created by authority of the United States of America, and having general jurisdiction for the trial of crimes and offences arising within said district, and that the said supposed trespass in said declaration mentioned, consisted of an order and decree of said criminal court, made by said defendant in the lawful exercise and performance of his authority and duty, as the presiding justice of said criminal court, for official misconduct and misbehavior of said plaintiff, (he, the said plaintiff, then and there being one of the attorneys of said criminal court,) occurring in the presence of the said defendant as the justice of said criminal court holding the same as aforesaid and not otherwise; as appears from the record of said criminal court and the order or decree of the defendant so made as aforesaid, which said order or decree is in the words following, to wit:

"On the second day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esquire, accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley. so
12 far from accepting this explanation or disclaimer, thereupon threatened the judge with personal chastisement.

"No court can administer justice or live if its judges are to be threatened with personal *chastisement* [violence] on all occasions whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished, as a contempt of court.

"It is therefore ordered that his name be stricken from the roll of attorneys practicing in this court.

"GEO. P. FISHER,
"*Jus. S. C. D. C.*"

And this the defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, &c.

WILLIAM A. COOK,
For Defendant.

Replication to defendant's second plea.—Filed June 19, 1869.

In the supreme court of the District of Columbia.

JOSEPH H. BRADLEY
vs.
GEORGE P. FISHER. } No. 4961. At law.

And the said Joseph H. Bradley, as to the said plea of the said George P. Fisher secondly by him above pleaded, as to the several causes of action in the introductory part of that plea mentioned and therein attempted to be justified, says that he, by reason of anything by the defendant in the plea alleged, ought not to be debarred from having and

maintaining his aforesaid action thereof against him; because he
13 says that the defendant at the said time, when, &c., of his wrong, and without the cause alleged by him in his said second plea *alleged*, committed the said several grievances in the said plea mentioned in manner and form as the plaintiff has above in his said declaration complained against the defendant. And this he prays may be inquired by the country, &c.

JOS. H. BRADLEY.

Joinder.

In the sup. c't, D. C.

GEORGE P. FISHER *ats.* JOSEPH H. BRADLEY.

The defendant joins issue on the plaintiff's replication to the defendant's second plea.

GEO. P. FISHER.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for May, 1869.

MONDAY, *May* 17, 1869.

By order of the court, Justice Wylie presiding, the term is commenced by proclamation of the marshal.

TUESDAY, *June* 29, 1869.

Session resumed, pursuant to adjournment, Justice Wylie presiding.

JOSEPH H. BRADLEY, PL'FF, *vs.* GEORGE P. FISHER, DEF'T. } No. 4961. At law. Cal. 255.

And now come here, as well the plaintiff, by his attorneys'
14 Messrs. Harris and Hughes, as the defendant, by his attorneys, Messrs. Cook and Riddle, and a jury of good and lawful men of this District, to wit: Peter May, John P. Hilton, Samuel H. Taylor, William H. Faulkner, W. C. Hazel, John Scrivener, James Mankin, George T. McGlue, Thomas W. Keithley, William Hickey, Samuel H. Williams, and William Kickham, who, being sworn to try the issues above joined, are respited till the meeting of the court to-morrow.

Adjourned till ten o'clock to-morrow morning.

WEDNESDAY, *June* 30, 1869.

Session resumed, pursuant to adjournment, Justice Wylie presiding.

JOSEPH H. BRADLEY, PL'Ft, *vs.* GEORGE P. FISHER, DEF'T. } No. 4961. At law. Cal. 255.

And now again come here, as well the plaintiff as the defendant, by their respective attorneys, and the same jury who were respited yesterday, and the said jury, having received the instructions of the court,

upon their oath, say they find the issues aforesaid in favor of the defendant.

And thereupon the plaintiff files his five several bills of exceptions to the rulings and instructions of the court upon the trial, and prays that the same may be signed and sealed, and made part of the record, which is done; and upon said exceptions, moves the court to set aside the verdict, and grant him a new trial of said issues, and the court orders that said motion be heard in the general term in the first instance.

Plaintiff's exceptions.—First bill.

In the supreme court of the District of Columbia.

JOSEPH H. BRADLEY *vs.* GEORGE P. FISHER. } No. 4961. At law.

15 On the trial of the issues in this cause joined the plaintiff to maintain the said issues on his part, produced and offered to read in evidence a certain paper-writing in the words and figures following to wit:

"On the second day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esq., accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, thereupon threatened the judge with personal chastisement. No court can administer justice or live if its judges are to be threatened with personal chastisement, on all occasions, whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished.

"It is therefore ordered that his name be stricken from the roll of attorneys practising in this court.

"GEO. P. FISHER,
"*Justice of the Supreme Court, D. C.*"

The han'writing of the said paper was admitted by the defendant to be his, and thereupon the plaintiff gave evidence to show that the defendant, after the jury had been discharged in the case of John H. Surratt, who had been on trial before the defendant, holding the criminal court of the District of Columbia, the defendant read the said paper-writing aloud in the criminal court-room, and handed it to the

16 clerk of the said court, with instructions to record the same; but the defendant, by his counsel, objected to the admissibility of the said paper as evidence in this cause, and the court sustained his said objection, and would not permit the same to be read; whereupon the plaintiff, by his counsel, prays leave to except, and does hereby, except to the said ruling of the court, and prays the court to sign and seal this his first bill of exception, and to cause the same to be enrolled; which is done this 30th day of June, 1869.

ANDREW WYLIE. [SEAL.]

Second bill of exceptions.

On the further trial of this cause, and after the ruling of the court set out in the plaintiff's first bill of exceptions, made part hereof, the plaintiff, to maintain the issue on his part joined, offered and read evidence from the record of proceedings before the supreme court of the District of Columbia, holding a criminal court for the trial of crimes and offences arising within the said District, at the March term thereof, in the year eighteen hundred and sixty-seven, on the 4th day of March, and the 10th day of August, in the year eighteen hundred and sixty-seven, and the continuous entries between, and on those two dates, to show that the said March term of said court began on the 4th day of March, in the year eighteen hundred and sixty-seven, and terminated on the said 10th day of August, in the year eighteen hundred and sixty-seven; and that the June term of the said court in said year began on the 17th day of June, in the year eighteen hundred and sixty-seven, and was regularly held by Chief Justice Cartter from that date, and by him adjourned from time to time.

And then read from the said record so much of the proceedings of said court, recorded on the said 10th day of August, 1867, as relates to the case of the United States vs. John H. Surratt.

17 UNITED STATES *vs.* JOHN H. SURRATT. } No. 4731.

Jury sworn on the 15th of June.

And now again come here the parties aforesaid, in manner aforesaid, and the same jury to whom this case was submitted on Wednesday last, and the said jury, after a full consideration of the case, do, upon their oath aforesaid, say that they cannot agree upon a verdict, and that there is no probability that they ever will agree; and thereupon the said jury is discharged, and the defendant is remanded to the custody of the marshal.

And thereupon the defendant, by his attorney, Mr. Bradley, objects to the jury being discharged.

And to the case ex-parte Jos. H. Bradley, in the words and figures following:

"On the 2d day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esquire, accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, thereupon threatened the judge with personal chastisement.

"No court can administer justice or live if its judges are to be threatened with personal chastisement, on all occasions, whenever the irascibility of counsel may be excited by imaginary insult. The offence
18 of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished. It is, therefore, ordered that his name be stricken from the roll of attorneys practicing in this court.

"GEO. P. FISHER,
"*Jus. S. C. D. C.*"

And thereupon, in order to show that the said order was prepared, written and published by the defendant with express malice against the plaintiff to defame and injure him, the plaintiff, and without the defendant having any jurisdiction to make said order, further offered to prove by the oaths of the said Joseph H. Bradley, Richard T. Merrick, Walter Lenox, Joseph H. Bradley, jr., John Wilson, George Phillips, witnesses duly summoned and now here in court, and by divers other persons, the facts following, to wit:

That there was no altercation on the 2d July, 1867, between the plaintiff and the defendant, and no words passed between them; nor were they near each other when the said criminal court took its recess until the next day or immediately thereafter, and as the presiding justice thereof was descending from the bench; to the admisibility of which evidence the defendant, by his counsel, objected, and the court sustained the said objection, and refused to admit the said evidence; whereupon the plaintiff, by his counsel, prays leave to except, and does hereby except, and prays the court to sign and seal this his second bill of exceptions; which is done accordingly this 30th day of June, 1869.

ANDREW WYLIE. [SEAL.]

Third exception.

And thereupon the plaintiff, after the refusal of the court to permit the evidence set out in the first and second exceptions aforesaid, which is made part hereof, the plaintiff, further to show that the de-
19 fendant had no jurisdiction, and acted with express malice toward the plaintiff in the premises, and was not sitting as a judge when he, the defendant, made the said order set out in the plaintiff's second bill of exceptions, offered to prove by the same witnesses and others that the only interview between the plaintiff and defendant, which occurred on the 2d July, 1867, after the said criminal court had taken a recess until the next morning, began after the court had adjourned, and the said defendant had left the court-room and the building and returned to the court-room, and in that interview the plaintiff did not address the defendant in a rude and insulting manner; that he did not charge the defendant with having offered him, the plaintiff, a series of insults from the bench from the commencement of the trial; that the defendant did not disclaim any intention of passing any insult whatever, nor assure the plaintiff that he entertained for him no other feelings but those of respect; that the plaintiff did not threaten the defendant with personal chastisement, but to the contrary thereof; the defendant was from the opening of the interview violent, abusive, threatening and quarrelsome.

And the defendant, by his counsel, objects to the admissibility of said offered evidence, and the court sustains the objection, and refused to admit the said evidence so offered; and thereupon the plaintiff prays leave to except, does except, and prays the court to sign and seal this his third bill of exceptions; which is done accordingly this 30th day of June, 1869.

ANDREW WYLIE. [SEAL.]

Fourth exception.

And thereupon, and after rulings of the court set out in the plaintiff's first, second, and third bills of exceptions, made part hereof:
20 The plaintiff, further to show that the defendant had no jurisdiction, and acted with express malice in the premises toward

the plaintiff, and was not sitting as a judge, nor holding a court when he made the order set out in the plaintiff's bill of exceptions, offered to prove by the same witness and others, that, in point of fact, when the said criminal court, on the said second (2d) day of July, 1867, adjourned over to the next day, the plaintiff was sitting on the north side of the court-room, and the defendant left the court-room by the south-east door, being a distance of some twenty or thirty feet from where the plaintiff was sitting; passed through the vestibule or hall into the marshall's room, and into the private room occupied by the judges; that after this the plaintiff went into the marshal's room to see the deputy marshal on business, remained there a brief time and returned to the court-room; that when the plaintiff first left the court-room the jury had retired in charge of the bailiff; that, on his return to the court-room the plaintiff proceeded to the north side of the court-room and sat down by the counsel with whom he was associated in the defence of Surratt, and entered into conference with them and the said Surratt; that conference was ended and the marshal had taken the prisoner from the court-room when the plaintiff went a second time to the marshal's room to see Mr. Phillips, and while he was there the defendant came out of said private room, passed by the plaintiff into the main hall of the eastern wing of the building, and went out of the front door of the building into the street.

That the plaintiff, in the meanwhile, had come with Mr. Phillips into the court-room, and was standing at the marshal's table talking with Mr. Phillips about the attendance and mileage of the witnesses in that cause, whom he was paying off; the defendant, having passed out of the building, as stated, found he had forgotten his umbrella, and returned
21 to the court-room for it, passed by the plaintiff, who was then talking to Mr. Phillips, ascended one or two steps towards the platform of the judges' bench, stretched out his arm, took his umbrella from under the table or desk, and turned to descend the steps towards where the plaintiff was standing, when the plaintiff addressed to him these words and no other: "Judge, what do you mean by treating me as you have done to-day?" The defendant replied with great violence, gesticulating and shaking his finger in the plaintiff's face; threatened him, and said the plaintiff had *assaulted* [assailed] him when he was sick, and that he would not have dared to do so if he had been well; offered to put his sickness against the plaintiff's age, and dared him to go out and fight; told plaintiff he knew where to find him, that he was responsible to plaintiff in every form for whatever he did or said; and called the plaintiff a coward, a scoundrel, and a son-of-a-bitch; that when he offered to put his sickness against the plaintiff's age, and dared him to go out and fight, the plaintiff replied that he could not decline that invitation, and they would go into a private room and settle the controversy, and stepped towards him; that plaintiff was thereupon seized by the by-standers and forcibly held, and it was while he was thus held the defendant spoke of his holding himself responsible, and used the offensive epithets above stated, and the plaintiff replied, if you are responsible I can wait until you get well.

That afterwards the defendant caused the plaintiff to be arrested and charged with a penitentiary offense for sending a challenge to him, the defendant, he, the defendant, well knowing that, in point of fact, the plaintiff had not sent him a challenge. To which offer the counsel for the defendant objected, and the court sustains the objection and excludes the evidence. And to this ruling of the court the counsel for the plaint-

iff excepts, and prays the court to sign and seal this his fourth bill of exceptions; which is done accordingly this 30th day of June, 1869.

ANDREW WYLIE. [SEAL.]

22 *Plaintiff's fifth instructions.*

Supreme court of the District of Columbia.

JOSEPH H. BRADLEY
vs.
GEORGE P. FISHER. } No. 4961. At law.

On the trial of this cause the plaintiff, to maintain the issue on his part joined, read in evidence to the jury from the "record of the proceedings before the supreme court of the District of Columbia, holding a criminal court for the trial of crime and offenses arising within the District of Columbia," so much and such part of said record under date of the 10th August, 1867, as relates to the cases of the United States vs. John H. Surratt:

UNITED STATES
vs.
JOHN H. SURRATT. } No. 4731. Murder.

Jury sworn on the 15th of June.

And now again come here the parties aforesaid, in manner aforesaid, and the same jury to whom this case was submitted on Wednesday last. And the said jury, after a full consideration, do upon their oath aforesaid say, that they cannot agree upon a verdict, and that there is no probability that they ever will agree, and thereupon the said jury is discharged, and the defendant is remanded to the custody of the marshal.

And thereupon the defendant, by his attorney, Mr. Bradley, objects to the jury being discharged.

And the case of ex-parte Joseph H. Bradley, as follows, to wit:

23 "On the 2d day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esquire, accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, thereupon threatened the judge with personal chastisement. No court can administer justice or live, if its judges are to be threatened with personal chastisement, on all occasions, whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished.

"It is, therefore, ordered that his name be stricken from the roll of attorneys practicing in this court.

"GEO. P. FISHER,
"*Jus. S. C. D. C.*"

And thereupon he placed a witness on the stand, and asked him to state all he knew of what passed between the plaintiff and defendant on the said 2d July, 1867; the time when the parties met, and whether it was before the adjournment of the court on that day, or after it had adjourned, and how long after it had adjourned; and to state all he knew relating to that matter.

But the defendant, by his counsel, objected to the admissibility of any evidence touching that matter. And the plaintiff, by his counsel, states to the court that he proposed to prove by the said witness that every fact stated in the said order was false; that the plaintiff did not
24 immediately on the said court taking its recess on the said 2d July to the next day, and as the presiding justice was descending from the bench, address the said judge in a rude and insulting manner; nor did he address the said justice at all until after the said recess or adjournment had been made, and he had returned to the court-room; that, at the time he, the plaintiff, first addressed the defendant on that day after the said recess began, the jury had left the court-room in charge of the bailiff; the prisoner on trial had also gone in charge of the marshal, and an interval of ten minutes at least had occurred between the adjournment of the court and after the justice had left the court-room and before his return to it; that this evidence was offered to show that the said justice had no jurisdiction in the premises; second, to show the falsehood of the accusation contained in said order; third, to show, in connection with other circumstances to be given in evidence, express malice in the defendant in making the said order; fourth, to show that the statements of facts contained in said order was corruptly fabricated by defendant to give color to the authority and jurisdiction claimed by him in making it.

But the court sustained the said objection, and ruled that, on the face of the record so given in evidence, the defendant had jurisdiction and discretion to make the said order, and he could not be held responsible in this private action for so doing, and instructed the jury that the plaintiff is not entitled to recover in said action.

And the plaintiff, by his counsel, excepts to the said ruling of the court refusing to admit the said offered evidence; and also to the said instruction to the jury so given by the court, and prays the court to sign and seal this his fifth bill of exceptions, and to cause the same to be enrolled according to the statute; which is done accordingly this 30th day of June, 1869.

ANDREW WYLIE. [SEAL.]

CLERK'S OFFICE, SUP. CT. OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing papers paged B, BB, and 1 to 22 inclusive, are true and complete copies, are on file and of record in said office; and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Joseph H. Bradley vs. George P. Fisher.

In testimony whereof I hereto subscribe my name and affix the seal of said court this sixth day of December, 1869.

[SEAL.]

R. J. MEIGS,
Clerk S. C. D. C.

(Indorsed:) 4961. Law. Sup. c't Dist. of Col. Joseph H. Bradley v. George P. Fisher. Record. Filed Oct. 18, 1869. R. J. Meigs, c'erk.

25 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the supreme court of the District of Columbia, greeting:

Whereas in a certain suit in said supreme court between Joseph H. Bradley, plaintiff, and George P. Fisher, defendant, (No. 4961,) which suit was removed to the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That the clerk of the supreme court of the District of Columbia, from which court the said cause comes, on writ of error, has omitted to include in said transcript the judgment rendered in said cause, by the said supreme court of the District of Columbia."

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions you shall
26 find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court the first Monday of December, A. D. 1870.

D. W. MIDDLETON,
Clerk Supreme Court, U. S.

Issued 20th October, 1871.

In obedience to the foregoing writ of certiorari, I certify that the justices of the supreme court of the District of Columbia, holding a general term of said court, did, on the fourth day of December, 1869, render a final judgment in the case mentioned in said writ of certiorari, in manner and form following, the same being of record of said court:

"JOSEPH H. BRADLEY, PL'FF,
"*vs.*
"GEORGE P. FISHER, DEF'T. } At law. No. 4961.

"And now again come here, as well the plaintiff, in proper person, as the defendant, by his attorneys aforesaid; and because it seems to the court, that there is no error in the record and proceedings of the circuit court, it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day, and recover against the plaintiff $27 80 *cents* costs of his defense, and have execution thereof."

Truly copied from the minutes of the court in general term, volume 1, page 398. Witness my hand and the seal of said court, October 23, 1871.

R. J. MEIGS, *Clerk.*

(Indorsed:) Sup. Court U. S. Dec. term, 1870. No. 317. Bradley vs. Fisher. Certiorari and return. Filed 24th October, 1871.

(Indorsement on cover:) No. 317. Joseph H. Bradley, plaintiff in error, vs. George P. Fisher. District of Columbia supreme court. Filed 29th November, 1870.

Supreme Court of the United States.

JOSEPH H. BRADLEY
vs.
GEORGE P. FISHER.

In error to the Supreme Court of the District of Columbia.

The facts of this case are substantially as follows: it being assumed that the evidence which was offered at the trial, and rejected by the Court was admissible.

The plaintiff was in the year 1867 a member of the Bar of the Supreme Court of the District of Columbia, and the defendant was one of the Justices of that Court. In March, 1867, the defendant as one of said justices, was holding the Criminal Court of said District, and by statute the term he was then holding was limited to the third Monday of June, when another term of said Court would begin. But it was further provided by Statute, that where at any term of the Court a jury shall be empannelled * * and no verdict found * * before the day appointed by law for the commencement of the next succeeding term, the Court shall, and may nevertheless proceed with the trial by the same jury in every respect as if such term had not commenced; and all subsequent proceedings to final judgment, if such shall be rendered, shall be entered, and have the same legal effect and operation as of the term at which the jury shall have been empannelled. See 5. Stat. 729; 10 Stat. 160; 12 Stat. 703, 704.

At the March Term, 1867, a jury was empannelled in a cause in the Criminal Court, before the defendant, in which cause the plaintiff was one of the prisoner's counsel. No verdict had been found and the trial was proceeding when the day appointed by law for the commencement of the next succeeding term arrived. The next term was regularly opened by another Judge, who continued to hold the same day after day. The defendant at the same time proceeded with said trial before him.

On the 10th of August, up to which day the said trial was continued, the jury came into court and announced their inability to agree on a verdict, and were thereupon, by order of the defendant, discharged.

The effect of this may become important in one aspect of this case.

After the jury had been thus discharged, the defendant proceeded to read from a manuscript which is admittted to have been in his own hand writing, as follows: (here insert his order.) He then handed the paper to the clerk of the Court, and ordered it to be recorded, which was done accordingly.

Shortly after that, he caused the plaintiff to be arrested, charged with the penitentiary offence of sending him, the defendant, a challenge, he the defendant knowing perfectly well the plaintiff had not sent him a challenge. The Grand Jury refused to find a bill on that charge against the plaintiff.

After this the plaintiff brought this action against the defendant, charging him with having falsely fabricated the statement of facts set out in said order, and thus corruptly seeking to give himself jurisdiction of the case set up therein, and with maliciously depriving the plaintiff of his office of attorney, &c., in a case in which he had no jurisdiction. This is the substance. To this he first pleaded not guilty. But a few days before the trial he pleaded specially that what he had so done was done judicially as a judge holding a court having jurisdiction of the case. The plaintiff replied with an *absque-hoc*, and on these pleadings the case went to the jury.

The first bill of exception sets out the proof given without objection, and the offer to read from the original manuscript, (see page 9 of record,) the order set out in the declaration, which was refused by the court.

1. The paper thus offered was admissible in evidence on the pleadings as they stood.

The paper complained of was set out in the declaration; the defendant justified, and the plaintiff replied putting in issue this justification.

Still there was the plea of not guilty, and therefore the plaintiff was to make out prima facie the case he had set up. On its face the paper does not profess to be "a proceeding in a court of justice," nor "the record of a case in a court of justice." That was for the defendant to show after the plaintiff had proved that "the defendant read the paper writing aloud in the criminal court room, and handed it to the clerk of the court with instruction to record," &c.

But the gist of the whole inquiry was whether that had been done, not by the court, but by the defendant maliciously and corruptly, and with intent to injure the plaintiff in a case in which the defendant had no jurisdiction, and the record did not show the personal act of the defendant. Under the pleadings it was submitted to the jury to find the facts, in order that under the instructions of the court as to the law, they might further find whether the defendant was innocent, or guilty of the charge.

These are supposed to be elementary rules of pleadings and trials *per pais*, and the court erred in excluding the proof.

As to the second, third, fourth and fifth bills of exception it will

be contended that the error of the court below is equally patent. The second will be found on pp. 10 and 11 of the record.

By this it will appear that the plaintiff gave evidence to show that the March Term, 1867, of the Criminal Court of the District of Columbia was held by the defendant as presiding judge, and was engaged in the trial of a criminal case which was still undetermined when the June Term of the Court commenced. That the jury in that case had not found a verdict, and the trial was continued until 10 August; and then read from the record of the proceedings of said Court, recorded on the said 10th day of August, 1867, so much as relates to the case of the United States *vs.* John H. Surratt, (showing that the jury was then discharged,) and to the case ex parte Joseph H. Bradley, (being the record of the same paper set out in the declaration,) and then "*in order to show that the said order was prepared, written' and published by the defendant with express malice against the plaintiff to defame and injure him, the plaintiff, and without the defendant having any jurisdiction to make said order, further offered to prove by witnesses named and then and there in court*" *that there was no altercation on the 2d of July*, 1867, *between the plaintiff and the defendant, and no words passed between them, nor were they near each other when the said Criminal Court took its recess until the next day or immediately thereafter, and as the presiding justice thereof was descending from the bench.*"

That is to say, he offered to prove that the whole statement thus ordered by the defendant to be put on the record of the proceedings of said Court was false and fraudulently prepared to give a color of jurisdiction in the case.

The third exception, p. 11, is to the rejection by the Court of evidence offered to show that the defendant was not sitting as judge when he made said order and to prove malice toward the plaintiff, and want of jurisdiction in the premises by the defendant by negatively showing the defendant's said statements in said paper writing were false, and by positive proof that the only interview between the plaintiff and defendant after the said court had taken its recess until next morning began after the court had adjourned, and the defendant had left the court room and the building, and returned to the court room, together with various other matters to show malice, corruption, and want of jurisdiction in the defendant to make the said order.

The fourth bill of exceptions p. 11, 12, and 13 is to the rejection by the court of parol proof in addition to the record, to show express malice that the defendant had no jurisdiction in the premises, and was not sitting as a judge, nor holding a court when he made said order, and goes into a detail of the proof offered.

The fifth bill of exceptions shows that the plaintiff put a witness on the stand and asked him to state all he knew of what passed between the plaintiff and the defendant on the said 2d July, 1867; the time when the parties met, and whether it was before the adjournment of the court on that day, or after it had adjourned, and how

long after it had adjourned; and to state all he knew relating to the matter.

The defendant objected; the court sustained the objection and ruled that, *on the face* of the record, so given in evidence the defendant had jurisdiction and discretion to make the order, and he could not be held responsible in this private action for so doing, and instructed the jury that the plaintiff is not entitled to recover in said action.

Upon this statement of the case the plaintiff in error makes the following points, and will endeavor to show that the Court below erred in each and every of its rulings, as set out in the record.

FIRST.

The defendant had no power or jurisdiction after the jury was discharged in the case of John H. Suratt, to do any act *as a court.*

1st. The statute, 10 Stat. 160, gave him power, and jurisdiction to try that case, but he could not and did not hold a *Court* for transaction of any other business.

2d. The proceeding to punish an attorney for contempt, or for misbehavior in office is a judicial proceeding, and constitutes a case when the proceedings are regular. See authorities cited below on other points.

3d. The case of Surratt having been disposed of, the functions of *the Court* before which it was tried ceased, and the Court could not lawfully sit any longer.

SECOND.

If the *Court* had no jurisdiction of the *case*, and the judge who was presiding knew all the facts, he is liable in this action, although he did not act corruptly or maliciously.

Houlden v. Smith, 14 Queen's B., 841

THIRD.

If the proceeding was to punish *for a contempt*, the defendant was prohibited by the act 3 March, 1831, 4 Stat., 487 for passing judgment.

1. The Criminal Court of the District of Columbia, is a court of the United States.

See Cons., 1st Article, § 8.
Cohen vs. State of Virginia, 6th Wheat, [illegible]. 176, 125
Kendall vs. United States, 12 Pet., 619, 622, &c.
Exparte Bradley, 7 Wall 374.
Act 27 February, 1801, 2 Stat., 106, §§ 3, 5 and 8.

2. The alleged offence is not charged to have been committed in open court, or so near thereto as to disturb the administration of justice.

3. The whole act looks to misconduct or contempt which interfere with the administration of justice, and to assault a judge out of court is a criminal offence, but not a contempt of court.

4th. If the punishment was for misbehavior in his office as attorney, this does not take the case out of the provision of the Statute,

prohibiting a summary proceeding, except in the cases therein mentioned.

FOURTH.

The record does not show that the Court was sitting when the alleged offence was committed, or that any notice or process of any kind was served on the plaintiff in error, or that he had in any way "a day in court," or that he voluntarily appeared, and *therefore* there was *no case* for the judgment of the Court; if the Court had been sitting at the time, the order and decree, as it is called in the plea, was made by the defendant and the whole proceeding was *coram non judice* and void.

1. This was a summary proceeding.

The summary jurisdiction given by law does not mean arbitrary power in a court, or unlimited will or discretion without any process of law; but is the exercise of that discretion vested by law in the court to proceed by *summary process* for the more expeditious dispensation of *justice*, without the intervention of a jury. 2 Black Com., book 4, ch. 20. Sullivan's Lec., sec. 39, p. 356. Ex. Par. Secomb.

"Where there is no jurisdiction there can be no discretion, for discretion is incident to jurisdiction." Piper *vs.* Pearson, 2 Gray, 120. "The discretion vested in courts where private rights are concerned is judicial, not unlimited." Harvie *vs.* Cammack, 6 Dana, 243. "It must not be arbitrary, vague, and fanciful." Rex. *vs.* Wilkes, 4 Burr., 2539. Whitman *vs.* Ely, 4 Serg. and Raw., 265. "If this discretion be *wilfully abused* it is *criminal* * * . For though the justices have, it is true, a discretion in these cases, yet it must not be permitted them to exercise arbitrary and uncontrolled power over the rights of other people; and in cases where their livelihoods are essentially concerned." Rex. *vs.* Young and others, 1 Burr., 563.

"The discretion of a judge is said to be the law of tyrants; *it is always unknown;* it is different in different men; it is casual and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion, to which human nature is liable." Bou. Dic. Ti. Discretion cases cited. (Words of Ld. Camden.)

2d. Notice to put the party on his defence is an indispensable rule of justice, and without this, the Court had no jurisdiction of the person.

"A judge, or any person acting by authority as such, where he has over the subject matter, and *over the person* a general jurisdiction which he has not exceeded, will not be liable to have his judgment examined in an action brought against him; but if the jurisdiction be wanting over the subject matter, and over the person, such judgment would be examinable. [Citing a number of cases.] The preceding cited cases relate to judges of record." Dynes *vs.* Hoover, 20 How., 83.

It is essential to a conviction that it be founded upon a proceeding against a person * * that it be a judicial act, Rex. *vs.* Lediard, Sayers, 6. "It is a principle of the common law, that a party cannot be removed from office in which he has a freehold but for misconduct, and that he is entitled to be heard upon charges made against him." Willis *vs.* Sir G. Gipps, 5 Moore's Privy Council cases, 391. "No court can act without giving the party an opportunity of being heard; and where a party has been turned out improperly, I think that he ought to be placed in the same situation he was in before the improper removal took place." "If a party was actually in office and was to be removed from it for cause, it *seems the invariable rule of justice that he should not be condemned unheard*, and a court had no right to assume that he would have no cause to show against his removal." Crompton Justice and Ld. Chan. Chelmsford in Queen *vs.* The Saddler Co., 10 Ho. Ld., 404.

"The sentence of removal from a freehold office ought to be preceded by some mode of inquiry in which the accused should have an opportunity of bearing a part. That important general principle, which was so strenuously asserted by Lord Kenyon in Rex *vs.* Gaskin, 8 Term R. 209, has been often held sound and never questioned. We do not think its application is excluded because the charge rests on the minister's personal observation, inasmuch as that is not inconsistent with the disproof of criminal motives and intentions, with the mitigation to which other facts might possibly entitle the accused, or with condonation of the offence. This principle appears *to us valuable to the judge, whom it tends to secure against yielding too hastily to his own first impression, while we think it indispensable for the sake of the party charged in all cases to the due execution of every judicial power.*

Ld. Denman, C. J. Queen *vs.* Smith, 5 Qu. B., 621.

"In the case of proceedings before magistrates on summary convictions, if the conviction does not state either that the party was summoned, or that he appeared, the conviction is bad. If you remove a corporator, and it turns out he was not summoned, *however* gross and flagrant his conduct may have been, he is entitled to be restored, and I *know of no case* in which you are to have a judicial proceeding by which *a man is to be deprived of any part of his property without his having an opportunity of being heard.*" Bailey J. Capel *vs.* Child, 2 Cromp., and Jer., 578–'9, and 584, and 573–'4 and 576–'7 Lyndhurst. "No proposition can be more clearly established than that a man *cannot* incur the loss of liberty, or property, for an offence, by a judicial proceeding, until he has had a fair opportunity of answering the charge against him." 587–'8–'9. This is laid down in Bagg's case, 11 Rep., 93 (b) 99 (*a*). Dr. Bentley's case, 1 Str., 557. Rex *vs.* Burr, 6 T. R., 198. Harper *vs.* Carr, 7 T. R., 270, and Rex *vs.* Gaskin, 8 T. R., 209, and many others, concluding with that of Capel *vs.* Child, 2 C. and J., 558, in which Bayley B. says, (quoting, see above, from I know of no case, &c.) That case was a very strong one, and shows how firmly the court adhere to the great principle of justice in every judicial proceeding. *Qui aliquid staturit parte in-*

audita altera æquum licit statuertt non æquus fuerit." Parke B., (op.) Bonaker *vs.* Evans, 16 Queen's B., 171. Ad and Ell.

"The Chancellor has authority to remove a judge of a county court only on the implied condition *prescribed by the principles of eternal justice that he hears the party accused.* He cannot legally act upon such an occasion without some evidence being adduced to support the charges." (190.) "The instrument (of removal) being drawn up in the words of the act of Parliament, we *may presume* that the Chancellor has duly exercised his jurisdiction *till the contrary is proved.* But we think it would have been open to Mr. Ramshay to show that he was removed *without notice* of any charges against him, or without an opportunity of being heard in his defence, or that no evidence was adduced to support the the charges, or that the complaints against him were not for inability, or misbehaviour in his office, and were of such a nature that if proved or admitted they could not disqualify him from his office, or amount to inability or misbehaviour within the meaning of the act of Parliament." (189–'90.) * * *

"Where the party complained against has had a fair opportunity of being heard, where the charges, if true, amount to inability or misbehavior, and where evidence has been given in support of them, we think we cannot enquire into the amount of evidence or the balance of evidence, the Chancellor *acting within his jurisdiction*, being the constituted judge upon this subject." (190.) Lord Campbell, ch. J. Ex. par Ramshay 18, Queen's B. 187. Every oppression against law, by color of any usurped authority is a kind of destruction, for *guando aliquid prohibiter, prohibiter et omne, per quod deveniter ad illud*; and that is the worst of oppression that is done under color of justice." Pitman, J. Green *vs.* Briggs, 1 Curtis C. C, 337 quoting Coke's Commentary on 29th Chap. Mag-Cart, (2 Ins. 48,53) "The objection for want of notice, can never be got over. The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence on Adam before he was called to make his defence, Adam where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat? and the same question was also put to Eve." Fortescue J. Rex, *vs.* University of Cambrige 1. Stran, 527.

"It is contrary to natural justice that a party should be proceeded against and *degraded* without being heard *and which cannot be done without summoning* the party and giving him an opportunity of being heard." Rex. *vs.* Cambridge, 2d Ld. Rayd, 1348. See, also, Lord Campbell's lives of the Chancellors, 5 vol. p. 288–'9, in appendix to life of Ld. Cambden.

This court has settled in Randall *vs.* Brigham, 7 Wallace, that when an attorney is proceeded against for misconduct and *has notice* and *an opportunity to be heard* the court has jurisdiction of the subject-matter and of the person.

This is one of the foundations of jurisdiction and essential to its

exercise. Notice in some form or other must proceed from the Court.

"The Attorney General contends that it is sufficient if the justice had jurisdiction *generally* over the subject matter of the complaint; but that is not so, for he must also have jurisdiction over the *particular* case," or his judgment is void *ab initio*. Mitchell *vs.* Foster, 4 Per. and D. 154, 12 A. and E. 472. "Before this power can be affirmed to exist it must be made to appear that the law has given the tribunal capacity to entertain the complaint," * * "and that such person (the person complained of) has been *properly brought before the* tribunal, to answer the charge." U. S. *vs.* Arredondo, 6 Pet. 709, 12 Pet. 718.

The proceeding by a court to punish for a contempt committed in the face of the court, is a *judicial* proceeding. And to impose a fine, or to commit to custody for such an offense, is not a violation of Magna Charta or of the Bills of Rights of the States. Because it is necessary to preserve the authority of the court, and *to secure the due administration of justice.* But it cannot extend beyond fine, or imprisonment or both, and is not considered as an original proceeding, but as the application of an incidental power of the court, *while in the* exercise of its lawful jurisdiction and discretion, the authorities for this may be found very fully cited in Randall *vs.* Brigham.

In the case at bar it is impossible to say whether the defendant meant to find the plaintiff guilty of a contempt or of misconduct in office. If the former, he is met directly and squarely by the act, 3d March, 1831. If the latter, he falls on the other horn of the dilemma, an entire absence of any notice to the plaintiff.

He contents himself with a statement of facts which he spreads on the record, and says: "The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked, or go unpunished." That offence was "Mr. Bradley * * threatened the judge with personal chastisement" out of court for what had passed in court. It is then not a charge of *professional* misconduct. It had nothing to do with the practice of his profession, or his office, as an attorney; but proceeded from "the irascibility of counsel, excited by imaginary insults offered to him in his place at the bar."

Is this *professional misconduct?* If it is, then it follows as an inevitable consequence that the court could not deprive the party of his franchise without a judicial inquiry. The record does not show any *judicial* inquiry. A record of a court is a memorial of a court of justice, and of such unquestionable verity that it may not be contradicted. The judgment, *and all* the proceedings previous to it, are carefully registered and preserved in public repositories under the name of a record, in a form well known, which comprises a complete history of the cause with the *conclusion of law upon it.* Now the memorandum offered was no record in form, substance, or intention. 13 Conn., 213.

"The line which separates error in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases when a judgment or decree is reversible only by an appellate court,

or may be declared a nullity, collaterally, when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case it is a record importing absolute verity, in the other, mere waste paper." 10 Peters, 475. "That power, the judiciary, is only capable of acting where the subject is submitted to it by a party, who asserts his rights *in the form prescribed by law.* It then becomes a case." Osborn vs. The Bank of the United States, 9 Wheaton, 819. "It is clear, that the judicial department is authorized to exercise its jurisdiction, &c., whenever any question shall assume such form that the judicial power is capable of acting on it. When it has assumed such form it then becomes a case; and then, and not till then, the judicial power attaches to it. In other words, a case is a suit in law or equity, instituted *according to the regular course of judicial proceedings.*" 3 Story Com., p. 507. So 2 Pet. 449. 6 Pet. 405. 5 Wheat's. Appen. 16. "If the court has jurisdiction of the subject matter, *and the parties* it is altogether immaterial how grossly irregular or manifestly erroneous its proceedings may have been, its final order cannot be regarded as a nullity, and cannot therefore be collaterally impeached. On the other hand, it it proceeded without jurisdiction, it is equally unimportant how technically correct and precisely certain in points of form its record may appear; its judgment is void to every intent and for every purpose, and must be so declared by every court in which it is presented. * * Its authority is wholly usurped and its judgment and orders, the exercise of arbitrary power under the forms, but without the sanction of law." Sheldon *vs.* Newton, 3 Ohio state, 498. "If there is a total want of jurisdiction the proceeding are void and a mere nullity, and confer no right, and afford no justification, and may be rejected when collaterally drawn in question." Thompson *vs.* Tolmie, 2 Pet., 162. "If the record does not show *any service of process, or any appearance in the suit, a party may be allowed to avoid the effect of a judgment by showing that he was not within the jurisdiction of the court which rendered it, for it is manifestly against first principles that a man should be condemned criminally or civilly, without an opportunity of being heard in his defence.*" Hall *vs.* Williams, 6 Pick, 289.

"The test of jurisdiction is, whether or not the justices *had power to enter upon the enquiry*, not whether their conclusions in the course of it were true or false; and we *receive evidence*, not to show that the magistrate has come to a wrong conclusion, but that he never ought to have begun the inquiry." The Queen *vs.* Bolton, 1 Queen's B., 71. "The power of the court then is, of necessity, examinable to a certain extent by that tribunal which is compelled to decide whether its sentence has changed the right of property. The power under which it acts must be looked into, and its authority to decide questions, which it professes to decide, must be considered." Rose *vs.* Himely, 3 How., 762.

"If jurisdiction be taken where there has been no *service of process or notice the proceeding is a nullity. It is not only voidable but abso-*

lutely void. Walden *vs.* Craig's heirs, 14 Pet., 154, and "when a judgment is brought collaterally before the court as evidence, it *may be shown* to be void *upon its face by want of* notice to the person against whom the judgment was entered, *or for fraud.* Webster *vs.* Reid, 11 How., 460. And a judgment which is absolutely void may be impeached by any person to whom it is prejudical by plea and proof." Downs *vs.* Fuller, 2 Met., 135. "In reference to *courts* of general jurisdiction, the general rule is that every presumption, not *inconsistent with the record*, is to be indulged in favor of their jurisdiction, and their judgments, however erroneous, cannot be questioned collatterally unless *it be shown affirmatively* that they had no jurisdiction *of the case.*" Harvey *vs.* Tyler, 2 Wall, 342. "The presumption in favor of the jurisdiction of superior courts necessarily ceases when the proceedings themselves negative the existence of jurisdiction. This is well settled as to their jursdiction over the cause, and would seem to be equally true of their authority over the parties. When, therefore, the record shows expressly or by necessary implication that the court has *proceeded without notice to the parties* the judgment will be void, and may be disregarded as such in any collateral proceeding in which it is called in question." Crepps *vs.* Durden, 1 Smith's Lead Ca., 1023, Ed. 1866. The distinction between the acts of inferior courts and those of superior tribunals is this only. That the acts of inferior courts are not good unless *prima facie* within their jurisdiction. The acts of superior courts are void, when *manifestly* beyond their jurisdiction, "1 Smith's Lead C. (Hare & Wallace notes) p. 284–'5.

There is no difference at common law in proceedings in courts against attorneys and other persons who are in possession of rights or franchises. And to remove an attorney from his office has, *with great uniformity*, been regarded as a proceeding *criminal in its nature*' but whether criminal or civil, always as a strictly *judicial proceeding*, to be effected only by "due process of law" and by the exercise of the *judicial discretion* of a court and *not* the *arbitrary power* of the judge. "That the charges in a regular complaint against an attorney ought not to be received and acted on, unless made on oath, is admitted. It is a course of proceeding which is recommended by considerations too obvious to require that they should be urged. "Ex. Par. Burr, 9th Wheat., 529.

The cases of Burr, Tillinghast, Secomb, [redacted] and Randall, in this court, proceed on the ground that the party had an opportunity to be heard, or that the whole matter occurred in open court, in the party's presence, and he had an opportunity to be heard in his defence. "It is true, that being officers of the court, attorneys are in many respects subject to the orders of the court, but these orders must be the result of *sound and legal* and not arbitrary and uncontrolled discretion." "When an attorney is proceeded against with the object of striking his name from the 'Roll' he is entitled to *have notice* of the charges against him, and an opportunity to make his defence. This is not only the dictate of natural justice,

and the *uniform practice* in such cases, but it has been carried into express adjudication in ex parte Heyfron 7, How's Miss. 127. In the case at bar no notice of the charges on which the order was made was given, no opportunity for explanation, apology or defence was afforded, the judgment of the court was *ex parte* and condemned the defendant without a hearing. A judgment thus rendered, so strongly in the nature of a criminal proceeding, and so serious in its consequences, cannot be supported. People *vs.* Turner, 1 Calif 150. "This court should not hesitate for a moment to exercise the discretion with which it is clothed by the law to purify the bar of official delinquency and base immorality. This is due to its own dignity and to preserve the character and integrity of the whole profession from scandal and reproach." "The discretion, however, with which we are invested, is by no means arbitrary but *is to be applied according to legal rules.* The *allegations and the proof are to be considered in the usual way*, and they must correspond, substantially, at least, or the accused must go acquitted. State *vs.* Chapman, 11 Ohio 530. (This was under a statute, Swan's Stat. 96, which gave to the court precisely the power it would have had at common law.) "In order to revoke or suspend the license of an attorney the *law requires* that there should be an accusation and charges, a *notice and a day in court*, and it cannot be done summarily by the order of the court. State *vs.* Sturt, 7 Iowa 499. See, also, Howard v. Gosset, 10, Q. B., 859, 411; Smith's Lead: Cases, (Ed. 1866,) 676, 835.

And the cases cited in Randall *vs.* Brigham.

These authorities fully establish the propositions that the law makes no difference between an attorney and others holding offices during good behaviour or other vested rights, or franchises subject to be taken away by "due process of law" and requires in every case of proceeding, to take away such office, right or franchise that the party to be proceeded against shall have notice and an opportunity to be heard, *before the court can acquire jurisdiction to adjudicate*, and that jurisdiction is limited to the exercise of a legal discretion by a court and does not include the arbitrary acts of a judge.

An action on the case may be maintained at common law for the *disturbance* of a party in the lawful possession and enjoyment of an office. "Though a case be of first impression, if it shows a concurrence of loss and injury from the act complained of, the action will be maintainable. "Lynch *vs.* Knight, 9 Ho. Lords 577." If the proceedings are void against an attorney he would have an action for damages if interrupted or deprived of the privilege and emoluments conferred by the license, 1 Calif 190. If the alleged tresspasser be a judge of a Court of Record, the only question is, was the act done a judicial act, done within his jurisdiction and of this he is not the judge. If it was not, "and he has acted without his jurisdiction, he has ceased to be a judge." See Randall *vs.* Brigham.

The cases of Yates *vs.* Lansing, and Miller and Searle, and Taffe *vs.* Downes, are cited with approval by this court in Randall *vs.* Brigham, in 7 Wallace. They all go on the ground that *the case* com-

plained of was within the jurisdiction of the court, and so in the case of Randall *vs.* Brigham.

Miller *vs.* Searle, and Hawkins, B. 1, ch. 22, § 6, 7; B. 1, ch. 28, § 5; B. 2, ch. 15, § 73, 76, are relied on generally as the leading authorities.

Yet the authority of Miller *vs.* Searle is but a dictum of Chief Justice De Grey, not necessary to the decision of the case, and when analysed goes no further than the proposition we maintain, that the judge must be *acting as a judge, i. e.* must have jurisdiction of the subject-matter and the person. He says: "That the judges of the King's Superior Courts of justice are not liable to answer personally for their *errors of judgment*, and this is not so much for the sake of the judges as of the suitors themselves." "In courts of limited jurisdiction having power to hear and determine, a distinction must be made. While acting within the line of their authority, they are protected as to *errors of judgment;* otherwise they are not." "In all cases where protection is given to the judge giving an *erroneous judgment*, he must be *acting as judge.* The protection in regard to superior courts is absolute and universal; with respect to the inferior courts it is only while they are acting within their jurisdiction."

Looking at this as an authority, what is its effect? Our difficulty in approaching it is the rule that records of courts of general jurisdiction import absolute verity, and cannot be contradicted. The answer to that is two fold. First. The record must show a case in which the court had jurisdiction over the subject-matter and the person. Second. Every record may be impeached which does not show jurisdiction over both, and every record may be impeached for fraud in procuring it, or forgery in executing it. These vitiate every record, and make it null. The way therefore is open, and the qualification annexed by the judge that he "must be acting as judge" shows that he did not claim absolute immunity. It had as far back as Bowser *vs.* Collins, in 22 Edw., 4th c. 33, been said by Piggott: "If the court has not power and authority then the proceeding is *coram non judice.* As if the court of common pleas holds plea in an appeal of death, robbery, or any other appeal, and the defendant is executed, *coram non judice quod omnes conceserunt.*" And it had long before De Grey been said by Hawkins B. 1, ch. 28, § 4, 5, 6,. "The judgment whereby one may be put to death must be given by one who has *jurisdiction in the cause*, for otherwise the judge and officer may be found guilty of felony." "And therefore if a court of common pleas give judgment on appeal of death, &c., &c., both the judge who give, and the officers who execute the sentence are guilty of felony, *because* these courts have no more jurisdiction over these cases than private persons; their proceedings are merely void, and without foundation." And such is the substance of the opinion in the case of the Marshalsea, 10 Coke 65, 76.

Can it make any difference that in this case the defendant had (possibly) jurisdiction of the subject-matter and not the person, and there he had jurisdiction of the person and not the subject-matter?

"Considering this case as a dispute between two individuals, it dwindles into insignificance, but in most of its stages it has become a controversy between power and right, and between judicial tyranny and the liberty of the citizen." Clinton, 9 Johns, 441. And it assumes a graver aspect as touching the independence of the bar, one of the safeguards of public liberty.

Chief Justice Kent in Yates *vs.* Lansing has rightly quoted Hawkins as far as he has gone, but he has stopped short at the beginning of the qualification which Hawkins has made. He goes on "if they (that is the judges) should be continually exposed to the prosecutions of those whose partiality to their own causes would induce them to think themselves injured; *yet* if a judge will so far forget the honor and dignity of his post, as to be solicitor in a cause which he is to judge, and privately and *extra judicially*, tamper with witnesses, or labor juries, he hath no reason to complain if he be dealt with according to the capacity to which so basely degrades himself." And he is here speaking of a case in which the judge, apparently has jurisdiction.

And so Chief Justice Kent, 5 John, 287, says "the record before the court presents the case of a civil suit against the chancellor of this State, for an act done *by himself in his judicial capacity* while sitting in the court of Chancery. The pleadings *admit* that the defendant did as chancellor and not otherwise at a court of chancery, &c.

Again, "The words of the statute upon which this suit is brought are, &c." "There cannot be a pretext for *this* suit, even *if the defendant was otherwise liable* for an undue exercise, or a misapplication of the power of his court."

Chancellor Lancing, in his own case says: "Though a judge acting in the sphere of his jurisdiction cannot, *unless actuated by corrupt motives* be impeached or questioned, it is otherwise when such jurisdiction does not exist; he is then exposed to be treated as a contemner of the court with whose process he interferes." How much more as a wrong doer attempting the destruction of an officer of his own court. And this accords with the intimation of this court in Randall *vs.* Brigham.

If he acts corruptly in his office, having jurisdiction, he may be impeached and punished, but that is no satisfaction to his innocent victim and does not restore him to his freehold unjustly taken from him.

In the case at bar the jurisdiction is expressly denied and put in issue by the pleadings.

The case of Taffe *vs.* Downes 3 Moore, Pri. Co., p. 36, has obtained celebrity. It is of the same class as all the others; a case of established or admitted jurisdiction of the case in which the injury was alleged to have been done. But the opinion of Mayne, especially, and of each of the other judges announces the true principles for which we contend in such clear and unambiguous terms as to deserve to be quoted. At p. 39 he says "you the plaintiff being imprisoned under my warrant, have a right to try by your action, in a

court of law, whether I am a judge of the King's Bench; and whether I did more against you than issue a warrant according to the legal course, upon an alleged criminal charge. If I have done more, you can on my plea prove it. If I made a warrant, the fraudulent cover for oppression, or corruption or malice, you can on my plea aver that. If I have done anything against you not in the course of my office you can say so. If the charge recited in my warrant is no legal charge of an offense, your demurrer will serve you. But I deny your right to try before this court and jury *in this action, the grounds* of my judicial acts, or the rectitude or legality of my judgment." * * "Does the imprisonment now appear to this court to have been a judicial act? If it does, the plea *standing admitted* is a bar."

And so Fox, Justice, p. 53, mentioning the case of Floyd *vs.* Barker, 12 Coke, 23, says. After mentioning that for acts done openly in court the judge is not responsible. The case goes on, lest there should be any mistake to show acts not within this protection "as if a judge hath conspired before out of court, *this is extra judicial;* subornation of witnesses, and false and malicious prosecutions out of court to such whom he knows will be indictors to find any guilty, &c., will be an unlawful conspiracy." These are not judicial acts; they are not within the protection of the principle, and the person who commits them, even though he be a judge, is left open to action because he has done that which was not fit for him to do—which did not appertain to a judicial character; they are extra judicial."

And so Norbury, Justice, p. 60, "It must be allowed that if the act in question can be legally imputable to the defendant in a capacity or character distinct from his judicial functions and privileges with which his office is clothed the question would be conclusively against the plea. *But it stands admitted by the demurrer that the defendant* acted in the matter as a judge."

In the same book, p. 75, 76, 77 will be found in the principal case, the opinion of Baron Parke, in full accord with these citations.

The judge, defendant, must have been acting as judge, *i. e.* he must have had jurisdiction of the subject-matter, generally, and of the person in the particular case, and that by some form of action, process or otherwise to put him on his defence, and give him an opportunity to be heard; as is agreed in all the cases, and then he must have proceeded judicially, and have kept within the limits of his jurisdiction according to the reasoning of these cases, otherwise his robe of office is no protection.

"That they possessed no power to punish him upon an Ex parte proceeding, without notice, or opportunity of defence or explanation for misbehavior, or for any particular instance of the same generally in his office as an attorney of the court, as claimed in the words of the return, irrespective of the doctrine of contempts. 7 Wall, 375.

FIFTH.

The extent of his power and jurisdiction was to punish by fine or imprisonment, or both. He could not disbar for a contempt only; and he could not take away the franchise of the attorney without due process of law. But if from malicious and corrupt motives, he usurped jurisdiction, knowing the facts, the fact that he claimed to be acting as a Court, and acted erroneously, cannot afford him any protection. See the cases already cited, and particularly 9 Johns, 407 to 413, and 432, and the following, and the passages in the opinion of this Court on p.p. and , 7 Wallace.

FINALLY.

If he were holding a court of record with such jurisdiction as the Criminal Court of this District has, and had jurisdiction and discretion to adjudge and punish for a contempt, or for misbehavior in and although the record on its face may show that the person and offence in the particular case were both within his jurisdiction—if he acted wilfully and corruptly in the matter and with express malice towards the plaintiff, and with intent to injure him, it is competent for the plaintiff, on proper and fitting allegations in his declaration, to prove those facts; to contradict the record by parol proofs, and show that in point of fact the whole statement contained therein is a fabrication and false.

1. Because no man is to be condemned under the law of the land without an opportunity of being heard.

2. No Court can create a jurisdiction for itself by its own statement of facts put on record, without any proceedings as the basis of such record.

3. Wilful abuse of power, corrupt exercise of office, express malice toward an individual, and working intentional injury to him by means of false entries made by a judge on the records of a court of general jurisdiction are not judicial acts, and are not within the discretion of a judge; and satisfactory proof of those facts is admissible in evidence in action to redress the wrongs done by such acts, to show that in the particular case the judge attempted to create for himself a jurisdiction and discretion not given by the law.

10 Rep., 76, *a. b.;* 2 Strange, 994; 3 Wils., 345; 2 T. R., 225; 5 Taunt., 500; 1 Marsh., 220; Rep., T. Hardw., 64; 3 M. & S., 411; 1 B. & C., 169; 14 Ad. & El., (N. S.,) 841; 15 Ad. and El., N. S., 240; 2 Stark. Ev., 807; 5 John., 282; 9 John., 395; 12 John., 257; 3 E. Maine, 330; 24 Ver., 143; 2 Gray, 120; Ib., 570; 4 Gray, 83; 11 Cush., 315; 2 Harr., N. J., 58; 7 Oh., (N. S.) 45, and the cases before cited.

JOS. H. BRADLEY.

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Supreme Court of the United States.

DECEMBER TERM, 1871.

JOSEPH H. BRADLEY, Sr., Plaintiff in Error,

vs.

GEORGE P. FISHER.

BRIEF OF DEFENDANT.

WILLIAM A. COOK,
A. G. RIDDLE,
For Defendant and Appellee.

Supreme Court of the United States.

DECEMBER TERM, 1871.

JOSEPH H. BRADLEY, Sr., Plaintiff in Error,

vs.

GEORGE P. FISHER.

BRIEF OF DEFENDANT.

History of the Case.

On the 10th of June, 1867, the trial of John H. Surratt, for the murder of Abraham Lincoln, was commenced in the criminal court of the District of Columbia, and continued from that period until the 10th day of August, on which day the jury was discharged, in consequence of a failure to agree on a verdict. The defendant was the presiding judge in the court during the progress of the trial, and until its termination. The court "took a recess," from day to day, until the 10th of August.

On the 2d of July the defendant directed the usual recess of the court to be taken, and upon doing so prepared to leave the bench. In doing so he was accosted by the plaintiff. The mode in which this was done appears from the following extract from the record of the court:

"On the second day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descend-

ing from the bench, Joseph H. Bradley, Esq., accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings than those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, threatened the judge with personal chastisement. No court can administer justice or live if its judges are to be threatened with personal chastisement on all occasions whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished.

"It is, therefore, ordered that his name be stricken from the roll of attorneys practicing in this court.

"GEO. P. FISHER,
"*Justice of the Supreme Court, D. C.*"

In consequence of this order the plaintiff instituted two suits against the defendant; one for libel, claiming damages at $20,000, and the other an action on the case, claiming a similar amount of damages. These cases were both tried in the circuit court of the District of Columbia, and judgment rendered in favor of the defendant in each case.

The plaintiff appealed to the court of the District in general term, where the judgments of the circuit court were affirmed, and appeals were taken to this Court. It is the latter of these cases which now comes before this court.

THE PLEADING.

The declaration appears on the transcript of the record, pages 2 and 4. To this declaration two pleas were filed.

One, the general plea of "not guilty," and the other a special plea, in which the fact that the defendant was one of the justices of the supreme court of the District of Columbia, and as such justice was regularly and lawfully holding *the criminal court* of the District, is presented as a defence to the action.

The General Question of the Case.

The general and important question which arises in the case, is, whether a judge of the criminal court of the District of Columbia, can be sued for any act done by him in his judicial capacity. If he cannot, this action cannot be maintained.

PARTICULAR QUESTION.

The Character of the Court.

The first question which arises is in relation to the character of the criminal court of the District. This, so far as this court is concerned, may be regarded as determined. In the case of *ex parte* Bradley, it is said—

"That the criminal court is a *separate and independent court*, invested with all the criminal jurisdiction to hear and punish crimes and offenses within the district."

It is, therefore, a court, not only of record, but of general jurisdiction.

Ex parte Bradley, 7th Wallace, p. 371.

And substantially the same had been decided in reference to the circuit court of the District of Columbia, in 1830:

"The circuit court of the District of Columbia is a court of record, having *general* jurisdiction over *crimnal* cases."

Ex parte Tobias Watkins, 3d Peters, 370.

The Inherent Power of the Court.

Such being the character of the court, its power as respects attorneys must be complete; and in the absence of any express legislation, it has full power to imprison or disbar for contempt or misconduct. This is a power inherent in all courts of record.

"Certain implied powers must necessarily result to our courts of justice from the nature of their institution. But jurisdiction of crimes against the State is not among those powers. To fine for contempt, imprison for contumacy, enforce the observance of order, &c., are powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts possess powers not immediately derived from statute."

United States *vs.* Hudson, 7th Cranch, p. 34.

Jurisdiction existing, the action of the Court is conclusive, although erroneous or irregular.

Wherever jurisdiction exists, or from whatever source derived, its exercise is conclusive; nor will an action lie for

damages even if the exercise of it *has* been erroneous or irregular.

The authorities in support of the position are numerous and familiar.

Yates *vs* Lansing, 5 John., 282, and cases cited.

"The right of punishing for contempt by summary conviction is inherent in all courts of justice and legislative assemblies, and is essential for their protection and existence. It is a branch of the common law, adopted and sanctioned by our State constitution. The discretion involved in this power is, in a great measure, arbitrary and undefinable; and yet the experience of ages has demonstrated that it is perfectly compatible with civil liberty, and auxiliary to the purest ends of justice. The known existence of such a power prevents, in a thousand instances, the necessity of exerting it; and its obvious liability to abuse, is, perhaps, a strong reason why it is so seldom abused. This power extends not only to acts which *directly* and *openly* insult or resist the powers of the court or the persons of the judges, but to consequential, indirect, and constructive contempts which obstruct the process, degrade the authority, or contaminate the purity of the court." (4 Black. Com., 280.)

Yates *vs.* Lansing, 9 John., 416.

The Act of Maryland of 1719.

But there is express legislative power, so far as the courts of the District of Columbia are concerned. By the act of May, 1719, chap. 4, sec. 2, of the laws of Maryland, it is enacted "That the several magistrates, judges of the several courts within this province, be, and are hereby authorized, and *strictly required, to observe the demeanor of all practitioners of the law before them*, as well as all ministeral officers, or other persons, who shall use *any indecent liberties* to the lessening of the grandeur and authority of their respective courts, and to discountenance and punish the same, according to the nature of the offence, *either by suspending*

such practitoners of the law from their practice perpetually or for a time, or to punish such practitioners, or ministerial officers, or other persons, by fine, at the discretion of such court, before whom such offence shall be committed, not exceeding 4,000 pounds of tobacco, in the superior courts, nor 2,000 pounds of tobacco in the several county courts within this province on each offender for any one offence!"

1 Kelty, Law of Md., 1799, ch. 4, sec. 2.

That this law is in force in this District will, perhaps, not be disputed.

In 1803 this court stated, "that it was not the object of Congress to change, in any respect, the existing laws further than the new situation of the District rendered indispensably necessary."

U. S. *vs.* Simms, 1st Cranch, 258.

And it has been repeatedly decided that it has common-law powers; thus differing from the courts of the United States. The power, therefore, of the criminal court of the District to expel a practitioner for misconduct is obvious.

Kendell *vs.* U. S., 12 Peters, 613, 614.

THE ACTS OF 1789 AND OF 1831 NOT APPLICABLE.

It will be observed that the existence of this power is not traced to either the act of Congress of 1789 or 1831.

1st Statutes at Large, p. 83, sec. 17.
4 " " p. 487, sec. 1.

For neither of these acts refer to the courts of the District of Columbia, either in terms, or by intention. They do not do so in terms. The act of 1789 is entitled, "AN ACT *to*

establish the judicial courts of the United States." It creates the *Supreme Court* of the United States; provides, that the United States shall be divided into *districts*, thirteen in number, and forms the *circuit* courts of the United States.

The 17th section provides, "that all the *said* courts shall have power * * * * * to punish by fine, or imprisonment, at the discretion of *said* courts, all *contempts* of authority in any cause, or hearing before the same, and to make and establish all necessary rules for the orderly conducting of business in the said courts, provided said rules are not repugnant to the laws of the United States.

1st Stat. at Large, p. 83.

The act was passed about twelve years before the cession of the District by Maryland and Virginia, and could not, of consequence, refer to a court of the District.

This act of 1831 refers exclusively to the act of 1789—is declaratory of it.

It is a historic fact that it grew out of occurrences in the *United States court;* and when it was passed, the statutory regulations of Maryland in relation to the conduct of attorneys was in force in the District, and it was unnecessary to legislate on the subject-matter embraced in that act. It is, therefore, "*the courts of the United States;*" that is, courts created

under article 3d, sect. 1st of the Constitution, which are referred to in the act of 1831, and not territorial courts, *nor the courts of the District of Columbia.* The latter exists primarily under article 1, sec. 8, of the Constitution of the United States:

"To exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the Seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

It is true they are created by the power of the Constitution under laws of the United States, but they are not not technically courts of the United States, or embraced in the words, "the several courts of the United States," as used in the act of 1831. Nor have any of the acts in reference to the courts of the district, used the phrase, "courts of the United States." It is never applied in the legislation of Congress to the courts of the District.

2 Stat. at Large, 103, 104.
5 Stat. at Large, 306.

If, then, the criminal court of the District of Columbia, is not technically a court of the United States, if the acts of 1789 and that of 1831 refer to courts which are strictly courts of the United States, their provisions with regard to contempts, or offenses of attorneys, do not include the criminal court, or the supreme court of the District, and, if they do not, they were not obligatory on the defendant, furnished no rule for his government, when the order of August 10th, 1867, was made, and his action must be considered in reference to the common law, or the inherent power of the court, and the law of Maryland incorporated

into that of the District. And by these, his jurisdiction to expel was full and complete.

It is true, in *ex parte* Bradly, 7 W., 304, the court appear to consider that the act of 1831 embraced the courts of the District; but, apart from the fact that the case was *ex parte*, the question was not raised in the answer of the judges of the supreme court of the District, nor necessarily involved in the case.

And Chief Justice Marshal says:

"It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles, which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

Cohen *vs.* Virginia, 6 Wh., 399.

IF THE ACTS OF 1789 AND 1831 APPLY TO THE DISTRICT THEY ONLY MODIFY THE POWER OF THE COURT.

But if the view presented is erroneous, if the acts of 1789 and 1831 include the criminal court of the District of Columbia, the power to punish for contempt or misconduct exists under these laws as well as at common law, and under the statute of Maryland. They do not destroy the jurisdiction. It is only modified and controlled by them, and only so far as respects "*contempts* of court."

"For misbehavior of any person or persons in the presence of the court, or so near thereto as to obstruct the administration of justice."

The power to issue attachments and inflict summary punishment for contempt exists, therefore, under the acts of 1789 and 1831.

The *fact* of contempt is one of which the court must be the sole judge. The act makes this so by confining the action of the court to cases *occurring* in its presence, or so near as to disturb its deliberations.

It gives in these cases absolute jurisdiction of subject-matter and of the person. It is, certain, therefore, that even under the acts of 1789 and 1831, it was competent for the defendant or appellee to notice and punish the contempt or misbehavior of the plaintiff.

The true doctrine of this case appears to be this: "No action will lie against a judge for any act which he does in the capacity of a judge."

Randall *vs.* Brigham, 7 Wallace, 523.

The general doctrine of this case is thus stated by Justice Field:

"Now, it is a general principle, applicable to all judicial officers, that they are not liable to a civil action for any judicial act done within their jurisdiction. In reference to judges of limited and inferior authority, it has been held that they are protected only when they act within their jurisdiction. If this be the case with respect to them, no such limitation exists with respect to judges of superior general authority."

Randall *vs.* Brigham, 7 Wallace, 538.

While enunciating this doctrine, it is added in this case, p. 536:

"They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, *unless perhaps when the acts in excess of their jurisdiction are done maliciously or corruptly.*"

And on p. 537:

"But responsible they are not to private parties in civil actions for their judicial acts, however much they may deserve condemnation, *unless perhaps* when the acts are *palpably* in excess of the jurisdiction of the judges, *and* are done maliciously and corruptly."

(1.) These two extracts are indefinite and indeterminate. They do not qualify the general principle, but *suggest* a barely possible qualification.

(2.) The suggested possible qualification, was not involved in the case, and at the utmost can only be regarded as a *dictum*.

(3.) "Palpable" means, "*easily* perceptible; plain, obvious; readily perceived and detected."

(4.) The qualification, would therefore, create this position: *When a judge of a court of "superior authority or general jurisdiction," from malicious feelings and for corrupt purposes, plainly and clearly transcends his powers, he will be liable to an action of damages on the part of the individual injured* for the acts done in excess of the jurisdiction.

The statement of the position, in this form, involves its refutation; for by its terms it concedes, that a judge of "a superior court of general jurisdiction *may* be questioned for any act done by him in his court."

To do so, it would *only* be necessary, for an "irrascible" or dissatisfied party, to *aver* that a court was without jurisdiction or had acted "in excess of its jurisdiction," from malice and corrupt motives.

Let *this* become the established doctrine, and the protection of the judiciary, "instead of being absolute and universal," will be uncertain and imperfect, and of little or no value.

And, as is said, in Phelps *vs.* Sill, (1 Day's Cases in Error, (Connecticut) 315,) "no man could accept the office of judge, if his estate were to answer for every error in judgment, or if his time and property were to be wasted in litigations with every man whom his decisions might offend."

The suggested qualification cannot, therefore, be sustained on any ground of law, justice, or public policy; it would, indeed, be subversive of the long-established and sacred doctrine of judicial irresponsibility, and, in the end, be productive of irreparable injury to the highest interests of society.

THE MOTIVES AND PURPOSES OF A COURT CANNOT BE ASSAILED.

Nor can it be supported by authorities. On the contrary, they establish that the motives or purposes of the judges of courts of general jurisdiction cannot be questioned or assailed.

"It is a principle lying at the foundation of all well-ordered jurisprudence—that every judge, whether of a higher or a lower court, exercising the jurisdiction vested in him by law, and deciding upon the rights of others, should act upon his own free, unbiased convictions, uninfluenced by any apprehension of consequences. It is with a view to his qualifications for this duty, as well in regard to his firmness as to his intelligence and impartiality, that he ought to be selected by the appointing power. He is not bound, at the peril of an action for damages, or of personal controversy, to decide right in a matter either of law or fact, but to decide according to his own convictions of right, of which his recorded judgment is the test, and must be taken to be conclusive evidence. Such of necessity is the nature of the trust assumed by all on whom judicial power, in greater or lesser measure, is conferred. This trust is fulfilled when he honestly decides, according to the conclusions of his own mind, in a given case, although there may be great conflict of evidence, great doubts of the law, and when another mind

might honestly come to another conclusion. But in a controverted case, however slight might be the preponderance in one scale, it must lead to a decision as conclusive as if the weight were all in that scale. Now, it is manifest that to every controversy there are two sides, and that a decision in favor of one must be against another. And this may extend to every interest which men hold most dear—to property, reputation and liberty—civil and social; to political and religious privileges; to all that makes life desirable, and to life itself. If an action might be brought against the judge by a party feeling himself aggrieved, the judge would be compelled to put in issue facts in which he has no interest, and the case must be tried before some other judge, who in his turn might be held amenable by the losing party, and so on indefinitely. *If it be said that it may be conceded that the action will not lie unless in a case where a judge has acted partially or corruptly, the answer is that the losing party may also aver that the judge has acted partially or corruptly, and may offer testimony of bystanders or others to prove it, and these proofs are addressed to the court and jury before whom the judge is called to defend himself, and the result is made to depend not upon his own original conviction. The conclusion of his own mind is the decision of the origiaal case, as by the theory of jurisprudence it ought to do, but upon the conclusions of other minds, under the influence of other and different considerations.* The general principle which exempts judges from answering in a private action, as for a tort, for any judgment given in the due course of the administration of justice seems to be too well settled to require discussion." (Pratt *vs.* Gardner, 2 Cush., 68.)

"What is he detained for? The answer is easy and simple. The *commitment shows* that he was tried, found guilty, and sentenced for *contempt* of court, and nothing else. He is now confined in execution of that sentence, and for no other cause. This was a *distinct and substantive offence* against the authority and Government of the United States. Does anybody doubt the jurisdiction of the district court to punish contempt? Certainly not. All courts have this power and must *necessarily* have it, otherwise they could not protect themselves from insult, or enforce obedience to their process. Without it, they would be utterly powerless. The authority to deal with an offender of this class belongs *exclu-*

sively to the court in which the offence is committed; and no other court, not even the highest, can interfere with its exercise, either by writ of error, mandamus, or habeas corpus. *If the power be abused, there is no remedy but impeachment.* The law was so held by this court in McLaughlin's case, (5 W. & Ser. 276,) and by the Supreme Court of the United States in Kearney's case, (7 Wheaton, 38.) It was solemnly settled, as a part of the *common* law, in Brass Crosby's case, (3 Wilson, 183,) by a court in which sat two of the foremost jurist that England ever produced. We have not the smallest doubt, that it is the law; and we must administer it as we find it. The only attempt ever made to disregard it was by a New York judge, (4 Johns. R., 345,) who was not supported by his brethren. This attempt was followed by all the evil and confusion which Blackstone and Kent and Story declared to be its necessary consequence. Whoever will trace that singular controversy to its termination will see, that the Chancellor and the majority of the Supreme Court, though once outvoted in the Senate, were never answered.

"The Senate itself yielded to the force of the truths which the Supreme Court had laid down so clearly, and the judgment of the court of errors in Yates' case, (6 Johns, 503,) was overruled by the same court the year afterwards, in Yates *vs.* Lansing, (9 Johns R., 423,) which grew out of the very same transaction, and depended on the same principles. Still further reflection at a later period induced the Senate to join the popular branch of the legislature in passing a statute which effectually prevents one judge from interfering, by a *habeas corpus*, with the judgment of another on a question of contempt. These principles being settled, it follows, irresistibly, that the district court of the United States had power and jurisdiction to decide what acts constitute a contempt against it; to determine whether the petitioner had been guilty of contempt, and to inflict upon him the punishment, which, in its opinion, he ought to suffer. If we fully believed the petitioner to be innocent—if we were sure that the court which convicted him misunderstood the facts, or misapplied the law—still we could not re-examine the evidence, or re-judge the justice of the case without grossly disregarding what we know to be the law of the land. The judge of the district court decided the question on his own constitutional responsibility. *Even if he could be shown to have* ACTED TYRAN-

NICALLY OR CORRUPTLY he could be called to answer for it only in the Senate of the United States."

Passmore Williams' case, 26 Pa., 18, 19.
Harman *vs.* Borthuson, 1 Denio, 539.
Weaver *vs.* Dessendorf, 3 Denio, 120.

"Wherever duties of a judicial nature are imposed upon a public officer, the due execution of which depends upon his own judgment, he is exempt from all responsibility by action *for the motives* which influence him, and the manner in which such duties are performed. If corrupt, he may be impeached or indicted, but he cannot be prosecuted by an individual to obtain redress for the wrong which may have been done."

3 Comstock, 466.

"But the case of Hammond *vs.* Howell, (1 Mod., 184; 2 Mod., 218,) deserves our particular notice, as being peculiarly weighty on the point before us. This is the case to which I have already alluded for another purpose. The defendant was recorder of London, and, as one of the judges of oyer and terminer, had fined and imprisoned the plaintiff, because he had brought in a verdict, as a petit juror, contrary to the direction of the court and the evidence. If ever a case was calculated to awaken sensibility, and to try the strength of the principle, this must have been one. It arose some time after the decision in Bushell's case, in which it was agreed by all the judges that a juror was not finable for his verdict. The act of the defendant was admitted to have been *illegal*, and no doubt it struck the whole court as a *high-handed* and *arbitrary* measure. The counsel for the plaintiff admitted the weight of the objection, that an action would not lie against a judge of record for what he did, *quatenus* a judge; and he endeavored to except this case from the general principle by contending that what the defendant did was *not* warranted by his commission, and that, therefore, he did NOT ACT AS A JUDGE. But the court did not yield to such

miserable sophistry; for they held, that the bringing of the action was a *greater* offence than the imprisonment of the plaintiff, for it was a *bold attempt* both against the Government and justice in general. They said that no authority or *semblance* of an authority, had been urged for an action against a judge of record for *doing anything* as judge; that this was never before imagined, and no action would lie against a judge for a wrongful commitment any more than for an erroneous judgment; that though the defendant acted *erroneously*, he acted *judicially*, and if what he did was *corrupt*, complaint might be made to *the king*, and if *erroneous*, it might be reversed.

The case of Groenvelt *vs.* Burnwell, (12 Mod., 386; 1 Salk., 396; 1 Ld. Raym., 454;) arose long after the passing of the *habeas corpus* act, and the unanimous opinion of the Court of King's Bench was given by Sir John Holt, whose name has always been held in reverence by English freemen; for he was a sound judge and an inflexible patriot, who manifested, on every occasion, a generous and distinguished zeal for the liberties of the people. He went at large into the cases in support of the doctrine, and showed, to every one's entire satisfaction, that judges were not liable to an action by the party for what they did as judges; *that no averment was admissible that a judge of record had acted against his duty;* that if even if a justice of the peace should record that, *upon his view*, as a *force* which was *no force*, he could not be drawn in question, for it is a judicial act; that, in like manner, jurors were not responsible for their verdicts, because they were judges of fact; and he added, in this emphatical language: 'That it would expose the justice of the nation, and no man would execute the office of judge, upon peril of being arraigned, by action or indictment, for every judgment he pronounces.' In the very modern cases of Miller *vs.* Searl and others, (2 Black. Rep., 1145,) and of Mostyn *vs.* Fabrigas, (Cowp., 172,) De Grey, Ch. J., in the one, and Lord Mansfield in the other case, *explicitly and emphatically declare the same doctrine.* Indeed, I am persuaded that the *discussion* of the question, even under this 5th section of the *habeas corpus* act, would not now be *endured* in any court in Westminster Hall."

Per Kent, Ch. J., Yates *vs.* Lansing, 5 John, 293–5.

"The power to punish for contempt is incident to all courts having competent jurisdiction, independent of statute; and the exercise of this power, resting in the sound discretion of the court, cannot be reversed by any other court. If the magistrate or court *act maliciously or oppressively* in such cases, the laws furnish the injured party a remedy by *indictment or impeachment.*"

Clark *vs.* The People, 1 Bre., 266.

So in Garrett *vs.* Ferrand (*m*) it is laid down by Lord Tenterden, as a general rule of very great antiquity, (*n*) "that no action will lie against a judge of record for any matter done by him in the exercise of his judicial functions." * * * "In the imperfection of human nature," says the same learned judge, "it is better that an individual should occasionally suffer a wrong than that the course of justice should be *impeded* and *fettered* by constant and perpetual restraints and apprehensions on the part of those who are to administer it. *Corruption* is quite another matter, so also are neglect of duty and misconduct: for these I trust there is and always will be *some* due course of punishment by *public prosecution.*

6 B. and C., 613 (Eng. C. L. Rep., vol. 13.)

It would not be difficult to increase these authorities. They certainly sustain the position that the motives or purposes of a judge of a court of record cannot be made the subject of judicial examination.

And, hence, no action could be sustained against the appellee, for it was his motives and purposes which it was proposed to "put in issue" before the jury.

THE RECORD OF A COURT OF GENERAL JURISDICTION CANNOT BE CONTRADICTED BY PARAL PROOF OR COLLATERALLY.

But while the motives or purposes of a decision or order of a judge of a court of general jurisdiction cannot be the subject of examination "at the suit of an individual," its records cannot be contradicted by parol proof, or be collaterally impeached.

To allow this would be as disastrous and injurious as inquiries affecting the motives and designs of judicial decisions. Neither can be tolerated.

1. Ordinarily a record imports "absolute verity."

Fischel's English Constitution, 337.

2. This is so fully and generally set forth in the authorities as almost to preclude a reference to them.

1. A record of a court of general jurisdiction can only be assailed or reversed by motion or an appeal.

2. It cannot be assailed indirectly, and must be received as "imparting absolute verity" in all courts in which it may be presented.

3. Its statements or recitals must be regarded as true, and irregularities do not effect its validity.

4. It can never be regarded as a nullity; not even if the "jurisdiction is not alleged in the proceedings."

Voorhees *vs.* Bank of United States, 10 Peters, 472.

This case is full and exhaustive.

McCormick *vs.* Sullevant, 10 Wh., 199.
Kennedy *vs.* Georgia State Bank, 8 How., 611.

These cases are general. A few may be cited which are more particular and relevant.

"This writ is, as has been said, in the nature of a writ of error, which brings up the body of the prisoner, with the

cause of commitment. The court can undoubtedly inquire into the sufficiency of that cause; but if it be the judgment of a court of competent jurisdiction, *especially a judgment withdrawn by law* from the revision of this court, is not that judgment in itself sufficient cause? Can the court upon this writ look beyond the judgment and re-examine the charges on which it was rendered? A judgment in its nature concludes the subject on which it is rendered, and pronounces the law of the case. The judgment of a court of record whose jurisdiction is *final*, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. *It puts an end to inquiry concerning the fact by deciding it.* * * * *

"*An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity, and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous.* The circuit court of the District of Columbia is a court of record, having general jurisdiction over criminal cases. An offence cognizable in any court is cognizable in that court. If the offence be punishable by law, that court is competent to inflict the punishment. The judgment of such a tribunal has all the obligation which the judgment of any tribunal can have. To determine *whether the offence* charged in the indictment be legally punishable or not is among *the most unquestionable* of its powers and duties. The decision of this question is the exercise of jurisdiction, whether the judgment be for or against the prisoner. The judgment is equally binding in the one case and in the other, and must remain in full *force unless reversed regularly* by a superior court capable of reversing it." * *

"Had any offence against the laws of the United States been committed, the circuit court for the District of Columbia could take cognizance of it. The question, whether any offence was or was not committed, that is, whether the indictment did or did not show that an offence had been committed, was a question which that court was competent to decide. If its judgment was erroneous, a point which this court does not determine, still, *it is a judgment*, and, until reversed, cannot be disregarded."

Ex parte Watkin, 3 Pet., 202, 203.

"If, then, this court cannot directly revise judgment of the circuit court in a criminal case, what reason is there to suppose that it was intended to vest it with the authority to do it *indirectly?* It is also to be observed that there is no question here, but that this commitment was made by a court of competent jurisdiction, and in the exercise of an unquestionable authority. The only objection is, not that the court acted beyond its jurisdiction, *but that it* erred in its judgment of the law applicable to the case. If, then, we are to give any relief in this case, it is by a revision of the opinion of the court, given in the course of a *criminal* trial, and thus asserting a right to control its proceedings, and take from them the conclusive effect which the law intended to give them. If this were an application for an *habeas corpus*, after judgment on an indictment for an offence within the jurisdiction of the circuit court, it could hardly be maintained that this court could revise such a judgment, or the proceedings which led to it, or set it aside, and discharge the prisoner. There is, in principle, no distinction between that case and the present; for when a court commits a party for a *contempt*, their adjudication *is a conviction*, and their commitment in consequence is execution. And so the law was settled, upon full deliberation, in the case of Brass Crossby, Lord Mayor of London, 3 Wilson, 188.

Ex parte Kearney, 7 Pet., 42, 43.

If these doctrines be correct no action can be sustained which involves a direct or collateral contradiction of the record of a court of general jurisdiction.

But it is precisely *such* contradictions which the action of the appellant requires.

The essential facts, that the appellee was a judge of the supreme court of the District of Columbia, engaged, in July and August, 1867, in holding the criminal court of the District, and that the order made by him, of which the appellant complains, is part of the record of the criminal court, is admitted in the declaration.

Transcript of Record, pp. 2, 3, 4.

But it is alleged that the statements of the *record*, or order, "were wholly untrue," its recitals of facts false, and corrupt and malignantly made; and it is assumed that these statements and recital of facts, as well as the evil motives of the appellee, could be proven by parol proof and collaterally in the circuit court of the District.

And the propositions of the appellant in the circuit court were in accordance with these assumptions.

Certainly a case of this character cannot be sustained. It is equally unjustifiable in its original and technical conceptions and in the means required to support it.

Nor does it seem possible in any manner to impair this conclusion. It cannot be done by suggesting that the jurisdiction of the court was transcended, because this would not of itself render its proceedings "void or a nullity." Nor by maintaining that there was error as to the manner of executing the assumed powers, because "mistakes" or irregularities do not effect the power itself. Nor can a record be impaired or destroyed by these. It remains "in full force" unless corrected "on motion or appeal," or in the mode of revision designated by law.

The entire doctrine on this point is clearly presented in Cooley's Constitutional Limitations, 2 ed., pp. 449, 450.

"When the question is raised, whether the proceedings of a court may not be void for want of jurisdiction, it will sometimes be important to note the grade of the court and the extent of its authority. Some courts are of *general* jurisdiction, by which is meant that their authority extends to a great variety of matters; while others are only of special and limited jurisdiction, by which it is understood that they have authority extending only to certain specified cases. The want of jurisdiction is equally fatal in the proceedings of each; but different rules prevail in showing it. It is *not to be assumed that a court of general jurisdiction has in any case proceeded to adjudge upon matters over which it had no authority; and its jurisdiction is to be presumed, whether there are recitals in its*

records to show it or not. On the other hand, no such intendment is made in favour of the judgment of a court of limited jurisdiction; but the recitals contained in the minutes of proceedings must be sufficient to show that the case was one which the law permitted the court to take cognizance of, and that the parties were subjected to its jurisdiction by proper process. There is also another difference between these two classes of tribunals in this, that the jurisdiction of the one may be *disproved* under circumstances where it would not be allowed in the case of the other. *A record is not commonly suffered to be contradicted by parol evidence;* but wherever a fact, showing want of jurisdiction in a court of general jurisdiction, can be proved *without contradicting its recitals,* it is allowable to do so, and *thus* defeat its effect. But in the case of a court of special and limited authority it is permitted to go still further, and to show a want of jurisdiction even in opposition to the recitals contained in the record. This we conceive to be the general rule, though there are *apparent* exceptions of those *cases where the jurisdiction may be said to depend upon the existence of a certain state of facts, which must be passed upon by the courts themselves,* and in respect to which the decision of the court once rendered, if there was any evidence whatever on which to base it, must be held final and conclusive in all collateral inquiries, notwithstanding it may have erred in its conclusions.

"When it is once made to appear that a court has jurisdiction both of the subject-matter and of the parties, the judgment which it pronounces must be held conclusive and binding upon the parties thereto and their privies, *notwithstanding the court may have proceeded irregularly, or erred in its application of the law to the case before it.*

THE APPELLANT ACQUIESCED IN THE ORDER OF THE CRIMINAL COURT, AND HE COULD NOT AFTERWARDS ASSAIL IT.

Indeed, it may well be doubted, if the appellant is not by his own act deprived of any right to assail the record, or to make the action of the defendant the foundation of an action.

The act of March 3, 1863, section 5, (2 Br. Dig., p. 177,) creating the court of the District, provides, that "any party aggrieved by an order, judgment, or decree, made, or pronounced, at any such *special* term, if the same involve the

merits of the action, or proceeding, appeal therefrom to the *general* term of said supreme court, and upon such appeal the general term shall review such order, judgment, or decree, and affirm, reverse, or modify the same, as shall be just." The distinction here seems to be this: the "separate" courts, circuit, equity, and criminal, are each a "*special term*," considered in relation to the "*general* term." A "*special* term" is complete in itself,—presided over by a single judge,—while the "*general* term" is comprised of all the judges. The first have original jurisdiction, the second chiefly appellate powers.

An appeal would, therefore, seem to be authorized to the general term, from an "order," &c., of the criminal court; and if it be so, there was an appropriate method, in which the order disbarring the appellant, could have been reviewed, and if any errors existed in it, corrected, or reversed.

No attempt, however, was made to secure any revision of it. It secured the acquiescence of the appellant. How, then, could he subsequently complain of the order, or base an action for damage on it?

"It is a general rule that irregularities in the course of judical proceedings do not render them void. An irregularity may be defined as the failure to observe that particular course of proceeding, which, conformably with the practice of the court, ought to have been observed in the case; and if a party claims to be aggrieved by this, *he must apply to the court*, in which the suit is pending, to set aside the proceedings, or to give him such other redress, as he thinks himself entitled to; or he must *take steps to have the judgment reversed by removing the case for review to an appellate court*, if any such there be. Wherever the question of the validity of the proceedings arises in any collateral suit, he will be held bound by them to the same extent, as if in all respects the court had proceeded according to law. An irregularity cannot be taken advantage of collaterally; that is to say, in any other suit than that in which the irregularity occurs, or an appeal or process in error therefrom. And even in the same proceeding an irregularity may be waived, *and will commonly be held to be* WAIVED, *if the party entitled to complain of it shall take* ANY *subsequent step in the case inconsistent with an intent, on his part, to take advantage of it.*"

Cooley's Constitutional Limitations, p. 452, 451, 2 Ed.

The Action Misconceived.

The proposed evidence inadmissible under the pleading.

But the action of the appellant seems to be misconceived in other respects.

The declaration regards the order of the criminal court as complete and effective. It distinctly avers that by it the appellant was deprived of his right to practice, etc.

But if it was "null and void," or if it could have been reversed, or corrected on "review," it could not have the effect attributed to it, except by the choice or act of the appellant.

And no suit can be maintained for an act which only becomes potential for injury in consequence of the indifference or co-operation of a party himself.

But a more grave and conclusive objection encounters the action. It arises from the pleadings.

The action is instituted "in the supreme court of the District of Columbia."

The averment of the first count is that the plaintiff was "deprived of his rights to practice in *this* court as an attorney of *this* court;" *i. e.*, "the supreme court of the District of Columbia."

And the criminal court is described as *one of the branches* of the said supreme court. And this count concludes with the statement that it was the intention to strike the name of the plaintiff from the roll of attorneys practicing in *this* court—the supreme court of the District of Columbia.

The second count in this respect corresponds with the first.

It commences with the averment that the plaintiff was in the lawful possession of the office of attorney-at-law, with the right and privilege at all times freely to enjoy said office by practicing as an attorney-at-law in any of the courts of the said District, and, referring to the order of removal, states

that it was "an order removing the plaintiff from the office of an attorney-at-law in the *said supreme court* of the District of Columbia."

It is of this "removal" and of the assumed pecuniary consequences that the plaintiff complains.

There is no count in reference to removal as an attorney of the criminal court, nor any averment of damages for *such* removal. Yet the order of *disbarment* was made in the criminal court of the district; and this court has determined that the *criminal court* is "a *separate and independent* court;" "*distinct from the supreme court,*" possessing, "*ample powers itself to take care of its own dignity and punish the offender.*"

Ex Parte Bradley, 7 W., 372.

It is therefore impossible that the order of the *criminal* court, could exclude an attorney from the *supreme court,* or deprive him of his right to practice in it; and a declaration resting on this erroneous conception is fatally defective.

This court, on p. 374, in *ex parte* Bradley, says: "Our conclusion is, first: That the *judges* of the court below exceeded their authority in punishing the relator for a contempt of *that* court on account of contemptuous conduct and language before the *criminal court* of the district, or in the presence of the judge of the same."

From this "conclusion" the deduction is inevitable, that an *order of the criminal court,* disbaring the plaintiff from practicing in *that* court could not be *introduced as evidence* to sustain an action of damages for *his expulsion from the supreme court.*

The *allegata* and *probata* would not correspond; the variance is radical and incurable.

Hence, if the action could be otherwise maintained, in this respect it would fail.

And it should not be overlooked that the special plea (Transcript of Record, pp. 6, 7) raises this point clearly and distinctly.

It sets forth that the defendant, at the time the order complained of was made, was "regularly and lawfully holding" "the *criminal* court of said District;" that the "supposed trespass" in said declaration mentioned consisted of an order and decree of said *criminal court*, made by said defendant in the lawful exercise and performance of his authority and duty, as the presiding justice of said *criminal court*, for official misconduct and misbehaviour of said plaintiff, (he, the said plaintiff, then and there being one of the attorneys of said *criminal court*,) occurring in the presence of the said defendant, as the justice of said criminal court, holding the same as aforesaid, and not otherwise, as appears from the *record* of said criminal court, and the order or decree of the defendant so made as aforesaid.

To this plea the plaintiff replied *de injuria*, *&c.*, or that it was *not* from the *criminal* court, but from the *supreme court* of the District, as averred in his declaration that he had been excluded by the order of the defendant.

The issue was thus distinctly created, that the order was the order not of the supreme court of the District, but of the criminal court. And on such an issue it was not possible for the circuit court to admit the order for the purpose of sustaining the averment that it excluded the plaintiff from practice as an attorney in the supreme court of the District, and from his office, in *that* court.

But *without this order* the action could not "proceed a single step." The plain and conclusive fact is, the appellant

did not claim damages for removal from the criminal court, but from the supreme court of the District.

It is thus manifest that, in whatever aspect the case is considered, whether in relation to the general or special doctrines which it involves, or in relation to the technical points or questions of pleading, it cannot be maintained.

And, therefore, the several offers of evidence made by the plaintiff were properly rejected by the circuit court.

The Offers of Evidence Examined.

An examination of these offers will still further show the inadmissibility of the evidence.

The purpose of the first appears to be to show, (transcript of record, p. 9,) that the order was not made until *after* the discharge of the jury in the Surratt case, and that, therefore, the order was invalid.

(1.) But the declaration admits that the record was actually made on the 10th of August, and that on that day the jury was discharged.

(2.) It is not admissible to inquire during what period or hour of a day a record of a court is made.

(3.) Moreover, the declaration contained no averment to authorize such an inquiry.

By the second offer (Transcript, pp. 10, 11) it was proposed to prove that the criminal court commenced on the 4th of March, 1867, and terminated on the 10th of August, and that the June term began on the 17th of June, and was held by Ch. J. Carter from that date from time to time; and that, therefore, it was not held on the 10th of August by the defendant.

This involved not only a contradiction in fact of the record, but was inconsistent with the declaration. It admits that, on the 10th of August, the defendant was holding the criminal court and made the order of expulsion, (2,) and there was no allegation in the declaration to justify the admission of evidence on this point. (3.) The proposed proof of the plaintiff (Merick and others) was narrow and technical—*i. e.* that no altercation took place on the 2d of July, and that no words passed between the parties "on that day," *when* the criminal court took a recess, &c.

It was consequently immaterial, being confined to an exact period, or to the moment of time mentioned in the order. It was strictly a denial of the circumstances or incidents of the transactions contained in the record and not of their substance. It amounted, therefore, to "a pregnant admission" that the conduct of the appellant *was* such as is mentioned in the order, and to a disputation of its particulars only.

The third offer (Transcript, pp. 11, 12) is largely of the same character as the second.

The *fourth* does not differ essentiallly from the second and third. It consists of a recital of circumstances and incidents, but distinctly admits an altercation in the court-room on the day mentioned in the order.

It contains the additional charge, that the appellee, after the altercation, caused the appellant to be arrested for a penitentiary offense, but the declaration contains no reference to the alleged act.

The fifth offer resembles the second, third, and fourth. It relates chiefly to the order of time when the altercation occurred, and originates the enquiries whether "it was *before* the adjournment of the court on that (the 2d of July, 1867,) or *after* it had adjourned," etc.

So that there is here simply (as in the other offers) a denial of the unimportant facts or circumstances attending the transaction which led to the expulsion of the appellee.

And therefore the offered evidence was *immaterial.* For it was of no consequence whether the occurrences between the attorney and the judge took place immediately upon the adjournment of the court, or shortly thereafter, or whether they transpired *as* the judge was descending from the bench, *after the recess* of the court, or upon his returning from a room adjacent to that in which the court was held.

None of these things could change or affect the fact contained in the order, *that* an altercation took place in the court-room on the day mentioned.

That, it was not proposed in any of the offers to controvert. On the contrary, several of the offers concede this fact.

And in the second instruction (Trans., p. 14) it is admitted that the appellant "FIRST ADDRESSED THE DEFENDANT," and in the third instruction (Trans., p. 12) that while the appellee was in the court-room, and as he "turned to descend the steps toward where the plaintiff was standing," he spoke thus to him: "*Judge, what do you* MEAN *by treating* ME *as you* HAVE DONE *to-day?*"

The spirit and intention of the language and approach admit of no misconception. It was the commencement of the altercation; and of itself sufficient to require notice and action from the court.

Surely the mere incidents and circumstances of an altercation thus commenced, were immaterial, and the offers which embraced them, were for this reason alone correctly "rejected."

SPECIAL POSITION OF THE APPELLANT.

Such are some of the positions which it has been demed proper to present on behalf of the appellee.

It may not, however, be improper to glance at one or two of the positions which the appellant seems to regard of special importance.

1. It is insisted that the entire order is void for want of notice.

But the authorities cited, establish the position that however irregular or erroneous the proceedings of a court, if in any form it could have been instituted, the court is protected.

Jurisdiction, or power to act on the subject-matter constitutes of itself a complete defense.

It will give force and clearness to this position to consider what is meant by jurisdiction—

"It *is* sufficient that the court which commits has jurisdiction of *the cause* of commitment; and, as the cause in the present case was an alleged malpractice and *contempt*, the court of chancery most undoubtedly had jurisdiction *over the subject-matter*. It is decisive on the point, that *the court* considered the act of which *it* complained, to be a contempt and malpractice, by being an unauthorized interference with the practice of the court. *Every court judges exclusively for itself of its own contempt; no other court, and much less a single judge out of court, can undertake to judge on the question.* The plaintiff was recommitted—to use the language of the order—for 'contempt and malpractice;' and *whether* the court of chancery was *right or wrong* in considering that the plaintiff's *conduct* amounted to contempt, *and whether it took the proper steps to ascertain the contempt*, is perfectly immaterial to *the point of jurisdiction. It had authority to punish contempt.* It must judge of what are contempts."—(Yates *vs.* Lansing, 5 John.)

And in the Passmore-Williamson case, Black, C. J., in delivering the opinion of the court, says:

"But the petitioner's counsel have put his case on the ground that the whole proceeding against him in the district court was *coram non judice*, null and void. It is certainly true that a void judgment may be regarded as no judgment at all, and every judgment is void *which* CLEARLY APPEARS ON ITS *own*

face to have been pronounced by a *court* having no jurisdiction or authority in the *subject-matter*. For instance, if a Federal court should convict and sentence a citizen for libel, or if a State court, having no jurisdiction except in civil pleas, should try an indictment for a crime and convict the party, in these cases the judgments would be wholly void. If the petitioner can bring himself within this principle, then there is no judgment against him; he is wrongfully imprisoned, and we must order him to be brought out and discharged."

26 Pa., 17, 18.

Cooley's Const. Limitations, 2 ed., (440.)

But notice or process is not required in all cases.

It is true, it is said in Magna Charta and in the Constitution, that no person shall be deprived of his life, liberty or property without due process of law. Process generally refers to a writ or warrant, but it is not confined to this.

1. "This word comprehends any lawful warrant, *authority*, or proceeding by which a man may be arrested."

2 Inst., 51, 52.

2. And it has been expressly decided, that the cited provision of Magna Charta, and the Constitution do not include "cases of contempt."

Ex parte Levi S. Burr, 2 Cr. C. C. R., 390–393.*

3. The point as to notice was distinctly made in *Ex parte* Secombe, 19 How., 14, 15.

Secomb complained, "that in the sentence of removal he is not found guilty of any specific offence, which would, under the statute of the territory, justify his removal, and had *no notice* of any charge against him, and *no opportunity of being heard* in his defence."

* In this case it is held, that the act of Maryland, of 1719, is in force in this District.

The statute of Minnesota, under which the court acted, directs, that the proceedings to remove an attorney, or counsellor, must be taken by the court, on its own motion, for matter within its knowledge; or may be taken on the information of another. And, in the *latter* case, it requires that the information should be in writing, and *notice* be given to the party, and a day given to him to answer and deny the sufficiency of the accusation, or deny its truth.

In this case it appears that the offences charged were committed in *open* court, and the proceeding to remove the relator were taken by the court, upon its own motion. And it appears by his affidavit that he had no notice that the court intended to proceed against him, had no opportunity of being heard in his defence, and did *not know* that he was dismissed from the bar until the term was closed, and the court had adjourned to the next term.

Now, in proceeding to remove the relator, the court was *necessarily* called on to decide whether, in a case where the *offence was committed in open court*, and the proceeding was had by the court on its own motion, the statute of Minnesota required that notice should be given to the party, and an opportunity afforded him to be heard in his defence. The court, it seems, were of opinion that *no notice* was necessary, and proceeded without it; and, whether this decision was erroneous or not, yet it was made in the exercise of judicial authority, where the *subject-matter* was within their jurisdiction, and it cannot, therefore, be reviewed and annulled in this form of proceeding."

And in *Ex parte* Bradly, 7 W., 373, it is said:

"*It is true, where contempt is committed in the presence of the court, no other notice is usually necessary;* but a proceeding to punish an attorney *generally* for misbehavior in his office, or for any *particular* instance of misbehavior, stands on very different ground."

By this is evidently meant, that for contempts, or misbehavior, in the presence of the court, notice is unnecessary, but that it is necessary for misbehavior occurring out of court, or in the practice of the office of attorney.

In the late case of Randall *vs.* Bingham, 7 Wh., 540, it is said: "It is not necessary that proceedings against attorneys for malpractice or *any* unprofessional conduct should be founded on *formal* allegations against them. Such proceedings are *often* instituted upon information developed in the progress of a cause, or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties, upon affidavit; and sometimes they are taken *by the court upon its own motion.* All that is requisite to their validity is, that, when *not* taken for matters occurring in open court, in the presence of the judges, *notice* should be given to the attorney of the charges made, and opportunity afforded him for explanation and defence. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

This is, indeed, little else than a reproduction of what is found in 4 Blackstone's Commentaries, (pp. 284, 287,) Sharswood ed., pp. 283, 286.

"To this head of summary proceedings may also be properly referred the method, immemorially used by the superior courts of justice, of punishing contempt by attachment, and the subsequent proceedings thereon. The contempts that are thus punished are either direct (which openly insult or resist the powers of the courts or the persons of the judges who preside there) or else are consequential, which (without such gross insolence or direct opposition) plainly tend to create a universal disregard of their authority. * * *

"If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, (i,) without any further proof or examination. But in matters that arise at *a distance*, and of which the court cannot have *so perfect* a knowledge, unless by the confession of the party or the testimony of others, if the judges upon affidavit see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should

not issue against him, (j,) or, in very flagrant instances of contempt, the attachment issues in the first instance, (k,) as it also does if no sufficient cause be shown to discharge; and thereupon the court confirms and makes absolute the original rule.

"This process of attachment is *merely* intended *to bring the party* into court; and when there, he must either *stand committed* or put in bail, in order to answer upon oath to such interrogatories as shall be administered to him for the better information of the court with respect to the circumstances of the contempt."

It is true that in *Ex parte* Garland, 4 Wall., 378, it is said, that "they (attorneys) hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded."

1. But if the latter part of this sentence, is more than *dictum*, it must be considered in connection with the late case of *Ex parte* Bradley, and Randall *vs.* Broghan; and in these it is determined, that notice is not necessary, where *offenses* or misconduct occur in open court.

2. The Garland case, from its character precluded a consideration of the mode of proceeding in cases involving contempts in the *presence* of the court. It arose out of an attempted legislative exclusion for general misconduct; or out of an effort on the part of Congress to exalt and purify the bar, by preventing "*traitors*" from practicing law in the courts of the United States.

3. It is therefore entirely irrelevant to the present case. "Let us consider the reason of the case. For nothing is law that is not reason."

Sir John Powell, Coggs *vs.* Bernard, 2 Ld. Raym. 911.

And certainly there is no reason which can require formal

"notice" to enable a court to take action concerning "contempts" and "misconduct," which occur in its presence, especially when they relate to the judge who may be holding the court.

The offender *is* present, and the court acts on its personal knowledge and observation. It would be little else than absurd to require notice or a summons or attachment in such a case.

The jurisdiction of the *person* is necessarily complete without any process; and its inutility is apparent from the truth stated by Blackstone, that "*the process of attachment is merely intended to bring the party into court.*"

And the declaration (Transcript of Record, p. 3) contains this important averment that the defendant, "on the 10th day of August, 1867, at the county and district aforesaid, unlawfully and without the leave or license, and AGAINST THE WILL AND OBJECTION," struck the name of the plaintiff off the roll of the attorneys of the supreme court of the District

Here is a direct admission that the plaintiff was not only present, but that he *objected* to the order of the court.

These facts are not set out in the order; but it is always to be presumed that a court acts properly.

And what the order omits, (if essential,) the declaration supplies.

Nor can the admission be contradicted in other parts of the declaration; for this would create a repugnancy destructive of the case: at least so far as respects the facts of the presence of the appellant and of notice to him.

Gould's Pleading, ch. 111, sec. 172, 173.

"Contempt" is defined to be "a disobedience to the court; or an opposing or despising the authority, justice, or dignity thereof."

Mosely on Inferior Courts, London, 1845, p. 35.

The conceded approach of the appellant to the appellee—of the attorney to the judge—in the court room, in the presence of auditors and spectators, on the 10th of August, 1867, with the inquiry, "Judge, what do YOU MEAN by treating ME as you have done to-day?" was of itself a contempt within this definition. And this was followed on the 6th of August, before the order of disbarment was made, by a letter from the appellant to the appellee, which was regarded as a challenge "to a personal combat." (Transcript, p. 12.)

Return of the Supreme Court of the District of Columbia, *ex parte* Bradley, p. 6.*

This approach, or "demeanor," was certainly such as in the words of the Maryland act of May, 1719, tended to "lessen the grandeur and authority" of the court, and, therefore, required its notice and action.

Without a direct disregard of this act, the "demeanor" of the appellant could not be overlooked.

Nor could it be, considered apart from this act.

"No one could pretend, that an attempt to *control* the deliberation of the bench, by *the apprehension of violence*, and

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* "WASHINGTON, *August* 6. 1867.

"Hon. GEORGE P. FISHER.

"SIR: In the altercation which occurred between us when you returned to the court room after the adjournment, on the 2d of July last, you observed that you were sick and were then pleased to add "you know where to find me; and I hold myself responsible in every form for whatever I say or do," or words to that effect, after which you applied to me most opprobrious epithets. There is but one interpretation of such an intimation received among gentlemen. I told you I could wait; and am gratified to find that you have recovered, and that the trial of the then pending case being now closed, we are both at liberty.

"That no time may be lost, I beg you will let me know as soon as you conveniently can, when it will suit you to meet me out of this district, that we may arrange, to our mutual satisfaction, the points of difference between us, without incurring the risk and odium which might accompany any controversy here or in public.

"With the same view I hand you this note in person, and am sir, your most obedient servant.

(Signed) "JOS. H. BRADLEY."

subject the judges to the power of those, who are, or ought to be subordinate to them, is compatible with professional duty, or the judicial independence, so indispensable to the administration of justice. And *an enormity of the sort*, practised but on a single judge, would be an offence as much against the court, which is bound to protect all its members, as if it had been repeated on the person of each of them, because the consequences to suitors and the public would be the same; and whatever may be thought, in *such* a case, of the power to punish for contempt, *there can be no doubt of the existence of a power to strike the offending attorney from the roll.*

"It is equally obvious, that an *attempt to overawe* the bench by *menace, challenge,* or the employment of an engine so powerful as the press, is an offence of the same stamp, the difference being but in the means of committing it."

Gibson, C. J., in case of Austin and others. 5 Rawle., 204.

"If the laws be not respected it will be difficult, if not impossible, to execute them. Their due execution depends more upon general sentiment than upon the physical power of the Government. The same observation will apply to courts of justice. Their power to enforce their judgments depends more on the continuance and support of the good and virtuous portion of society than upon the power of the executive. In order to obtain that countenance and support they must deserve respect; *and that court which may with impunity be treated with contempt will inevitably be contemptible, even in the eyes of the good and virtuous.* Their judgments will not be executed, the law will become a dead letter, and fraud and violence will prevail. It is therefore of the highest importance to the peace and good order of society that courts of justice should have the power of punishing contempts.

"The court has thought it necessary to make these observations because the doctrines advanced by the highly respectable and eloquent counsel at the bar seemed to the court to be dangerous, not only to the peace and good order of society, but to the very existence of personal and civil liberty. *It is not the right of the courts only, but it is the right of the people, to cause their courts to be treated with respect. It is the public interest and not the personal pride of the judges, as suggested at the bar, which claims the power for the courts.* As individuals we

claim no more respect than our individual characters deserve; but, as judges of this court, we should betray our trust, we should become traitors to the people, if we did not claim the respect due to a judicial tribunal, and enforce that claim by all the means which the laws allow. And while the court has means consistent with the dignity of such a tribunal, and sanctioned by the uninterrupted usage of ourselves, our predecessors, and ancestors, for more than six hundred years, it will not condescend to personal conflict with any person who may contemn its authority."

Cranch, C. J., in *Ex parte* Burr, 2 C. C. C., 393, 394.

More might be added, but it is unnecessary to do so.

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